1900-004 Chancery Causes: Greer Machinery Co. vs. George M. Stains Folder 1 of 2
Lee Co.

Greer, Durcan, Gillespie

CA - Debt
T - Property

- Correspondence

To the Hon. W.T. Miller, Judge of the Circuit Court for Lee Co.;

Humbly complaining your orators J.W. Greer, John G. Duncan, W.O. Greer and E.W. Gillespie, partners in trade doing buisness under the firm name of Greer Machinery Co., would respectfully represent and show unto your honor that on the 8th day of October, 1897, Frick ~~and~~ Co., of Waynesboro, Pa. sold and delivered to G.M. Stains certain machinery, as follows, One Frick Co., 9 x 12 cylinder portable engine on sills No. 6717, one Frick Co., second hand saw mill complete with fixtures; one 60" 8x9 Gager solid tooth Atkins saw, 2 cant hooks, 1 pipe wrench, 60 feet 1 in. pipe and 80 feet 12" 4 ply rubber belting; and, contemporaneous with the said sale the said G.M. Stains, in order to secure the purchase price of the said machinery which was yet unpaid, amounting to the sum of $975.00, executed to E.W. Gillispie, one of the aboved named firm, a deed of trust on said machinery to secure the said balance as aforesaid; and for the said balance the said Stains executed the following notes dated the 8th day of Oct. 1897, payable at the Holston National Bank in the city of Knoxville Tenn, viz.

1 note due Jan 8, 1898,	$200.00
1 Note due April 8, 1898,	115.35
1 note due July 8, 1898,	110.00
1 note due Oct 8, 1898,	100.00
1 note due Jan 8, 1899,	110.00
1 note due April 8, 1899,	110.00
1 note due July 8, 1899,	110.00
1 note due Oct. 8, 1899,	110.00

All of the said notes were assigned to the said complainants which is a corporation by the said Frick Co., and none of them were ever paid upon maturey

that your complainants are the bonafide owners of said notes & debts

nor have they been paid at all, and remain yet due and unpaid.

Your orators will represent and show unto your honor that by the terms of the said notes they are all now due and by the terms of the said deed of trust, for it is provided in the face of the said notes and in the said deed of trust that when any one of the notes feel due and was not paid the whole debt should become due. Your orators will furthur represent and show unto your honor that the said contract and said notes were executed in the state of Tennessee and to be perfomed in the State of Tennessee, that upon the face of the said notes it was provided that in the event that said notes were not paid and they were placed in the hands of attorneys for collection that the said Stains should pay as well 10 per centum on the amount thereof as Attorney's fees as well as the face of the said notes and interest, a contract that is valid in the state of Tennessee, as your orators will show your honor by the laws of that State.

The first note above referred to of $200.00 was sued upon in the State of Tennesse, and is not in question here so far as seeking a recovery thereon in this suit.

Your orator will furthur represent and show unto your honor that the said G.W. Stains is now a non-resident of this State that the property above discribed is situated in the county of Lee, about 4 miles east of Cumberland Gap, Tennessee; and your orators are informed is now upon the land of W.G. Colson.

Your orators here file with this bill to be taken and considered as part hereof, the said original deed of trust and the said severl notes above discribed, except the $200.00 note.

Your orators are furthur informed, believe and charge that the said G.W. Stains is about to move the said property out of the

state to the State of Ky.

The premises considered your orators are advised that they have a right to have the property attached and held untill the order of the court, that as the said R.W. Gillespie as a member of the said firm is interested in said property, that he sould be removed and another trustee appointed in his place, that upon a hearing a decree be rendered directing the sale of the said machinery according to the terms of the said deed of trust.

The prayer therefore of your orator is that an order of publication be made for the said Stains who is a non resident, that he be required to appear and answer this bill, but not under oath that being waived, that a proper attachment be issued, that a decree be rendered in this cause directing the sale of the said property in order to pay the said debt as aforesaid and the costs of this proceeding, and all other furthur and general relief that the nature of their cause and equty may sanction. And they will ever pray &c.

Pennington Bros. P Q

that a proper attachment be issued, that a decree be rendered in this cause

Greer Machinery Co. Com.

vs { Bill in Chancery.

Geo. M. Stairs. Deft.

1899. 2nd August rules bill filed & pa Executed on W. G. Coleson the ~~property~~ party in possession of the property & O.P. for non-resident & ~~Decree Nisi~~

" 1st Sept rules O.P. Complete & D N Conf'd and Cause set for hearing

" November term Continued

1900 March Term Decree final Order Book No 6 Page 380.

C. W. PENNINGTON PORT [illegible]

Pennington Bros.
ATTORNEYS AT LAW
JONESVILLE AND PENNINGTON GAP VA

Pltffs Costs

Clerk	8.59
Tax	1.50
Printer	5.00
Shff	3.50
atty	18.59

Defts Costs

Clerk	1.50
atty	15.00
Dagage	5.00
	~~$27.50~~
	$21.50

To the Honorable I.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

The demurrer and answer of C.M.Stains, to a bill of complaint filed in in said Court against him by J.M.Greer, John C.Duncan, and E.W.Gillespie, partners in trade doing business under the firm name of the Greer Machinery Company.

Respondent says that the said bill of Complaint is not sufficient in law, and he demurs thereto, and not waiving said demurrer, but relying and insisting thereon, should other and further answer be required of him he answers as follows:

1 Respondent says that it is not true that the said Frick & Company sold and delivered to him the said certain machinery mentioned and specified in the plaintiff's bill, nor any part thereof, and that he denies that he executed any of the notes mentioned in said bill to the said Frick & Company, and respondent further denies that he executed the deed of trust mentioned in said bill or any other deed of trust to the sai E.W.Gillespie,Trustee, to secure any notes executed to the
2 said Frick & Company.

Respondent says that it is true that he executed the notes sued on to Frick Company as and for the purchase price of the same identical machinery mentioned and set out in said bill, and that he executed a deed of trust to E.W.Gillespie,Trustee, on the same identical property and machinery to secure the payment of the said notes executed to Frick Company, and that the said deed of trust is the same filed by the plaintiff with their bill, and speaks for itself as to its terms and provisions.

Respondent further says that after the execution of the said notes and deed of trust as aforesaid that the said property and machinery was shipped to him, but that said machinery and property on arrival was not the property and machinery mentioned and described in the deed of trust, which he had contract for and bought, and said property and machinery not being the same that he had purchased, he refused to accept it and so notified said Frick Company, and the same was ordered to be returned by and shipped back to the said Frick Company which was accordingly done.

Respondent further denies that he is now in possession of said machinery and property, and denies that any one has the same in their possession for him. And he denies that the said property and machinery at the time of the institution of this suit was in Lee County, Virginia. Therefore respondent is advised that under the above statement of facts that there is a total failure of consideration for the execution of said notes of the said deed of trust, and that the said notes and deed of trust are null and void, and should be cancelled and delivered up to him.

Respondent further denies that the said notes were assigned by the said Frick Company to the said plaintiff.

Respondent further alleges that this whole transaction was carried on by the said Frick Company through the plaintiffs as said Frick Company's agent, with him, and that if the transaction fell through and failed as to Frick Company, it also failed as to the said plaintiffs.

3 Respondent denies that all of said notes were due and payable at the time of the institution of this suit, and he denies the right of the plaintiffs to collect any of them off of him.

4 Respondent denies that he is the owner of any of the machinery and property levied on in the attachment in this case.

5 Respondent will now show your Honor that he did purchase from the said Frick Company through the Greer Machinery Company as said Frick Company's agent the said machinery and property mentioned and set out in said deed of trust at the price stated in plaintiff's bill, and

6 for which said notes and said deed of trust were executed, but he further alleges that he did not get the said machinery and property and that the said Frick Company failed to perform its contract with him, and that there is a total failure of consideration for the execution of said notes and deed of trust. And respondent further alleges that by reason of the non-performance of said contract by the said Frick Company, ~~and by said total failure of consideration~~ he has sustained damage to the amount of $600.00, and for which amount he asks judgment against the said Frick

7 Company and the plaintiffs.

Respondent further denies that said original contract was made in the state of Tennessee and he denies the right of the plaintiffs' under the laws of Virginia, to collect the 10% attorney's fees stipulated for in said notes if said plaintiff should be entitled to collect anything, and he further denies that he is or was about to remove said property out of the state of Virginia to the state of Ky.

Respondent denies the right of the plaintiff, if they should have any rights to be enforced under said deed of trust, to come into a Court of Equity to have a trustee substituted to execute said deed of trust, because he has an ample and sufficient remedy at lawk to have said trustee so substituted.

And now denying each and every allegation in said bill not hereinbefore admitted, or denied, and having answered as fully as he is advised that it is material, respondent prays to be hence dismissed with his reasonable costs in this behalf expended. And he will evey pray &c.

C. J. Duncan & B. H. Dennis,
attys for Respondent.

Grier Machinery Co.,
vs.
G. M. Stains
} Exceptions to Answer

First; plaintiff excepts to that part of defendants answer in so far as it seeks to plead offsets against said plaintiff, because the notes sued on are negotiable; no offset, failure or want of consideration can be set up against an assignee of a negotiable instrument

Overr
Ruled
Except as to note which became due Oct 8, 99-

Second, the plaintiffs further excepts to that part of defendants answer in so far as it seeks to claim damage against their co-defendant, Frick Co. ~~for damages~~ ~~against~~ because to make their co-defendant liable, it would have to be by cross-bill and their co-defendant made a party thereto. But your exceptor says said defendant could not sustain a cross bill in this cause because the judgment asked would be between co-defendants

Overr-Ruled

when there would be no judgement for the plaintiff
Auld & Carrington vs. Hayes 28 Gratt. 383.
2 Bart. New Chan. Prac. p. 849.
4 Min. 1381; 94 Va., 140

Third. the plaintiff excepts to said defendants answer in so far as it seeks to recover from them damages for an act not alleged to have been committed by them. The most that can be pleaded against assignees of debts non-negotiable are all just discounts allowable against the obligee: $2845-

Fourth, the plaintiff again excepts to said answer contained between the figures 4 & 5 on page two because not full and complete, in this, while he denys ownership of the property sued for and attached upon, the answer fails to state in whose the property is, if he knows, or else he should allege he does not know who claims the property
$ 2898.

Fifth for various other good reasons apparent on the face of said answer they expect to said answer which will be pointed out at bar.

All which is respectfully submitted.

Remington Bros.
for Union Machinery Co.

Geer Machinery Co

Exceptions
to
vs } Answer of
Stains

G. M. Stains et al

G. M. Stains,

Ads { Demurrer / Answer

Grier Machinery Co.

Filed in open Court
and by leave thereof
November the 17th 1899
A B Munsey Clerk

Greer Machinery Co., Complts }
vs. } In Chan.
G. M. Stains & Frick Co., Defts }

This cause came on this day to be heard upon the bill of the complainant and exhibits filed therewith,* the demurrer of the defendant G. M. Stains to said bill, and was argued by counsel: On consideration of all which the court being of opinion that Frick Co. should be a party to said bill, said defendant's demurrer in that respect is sustained; but on motion of said complainant leave was granted them to amend their bill by making said Frick Co. a party defendant to said bill which was done at bar and said Frick Co. appeared to the same by counsel and waived process. Thereupon the defendant, Stains, moved the court for a continuance of said cause* but the court overruled his motion,

* & motion by defendant to quash the attachment issued in this cause on July 14th 1899 which motion was sustained and said attachment quashed —

* on the ground a new attachment had issued after the quashing of the first, which was made returnable to 2nd Dec Rules 1899 and whole case was not matured for hearing.

and required him to answer which was done by filing his answer herein, and thereupon this cause came on to be further heard upon said bill as amended & exhibits filed therewith, the answer of said defendant and exceptions in writing of said complainant to said ~~defendant's~~ answer, and was further argued by counsel: On consideration of all which Nos. ~~two~~, four and five of said exceptions are overruled and No. one sustained as to the note due Oct 8th 1899, and overruled as to the others and No. three sustained as to said complainants but overruled as to said Frick Co. But it is adjudged, ordered and decreed that said answer be treated as a cross which said defendant will mature at rules. And this cause is continued.

costs by agreement.

By § 3291. a plaintiff at or after the rule day at which the bill is taken for

Geer Machinery Co

vs } Decree

G. M. Stains et al

Entered on Chy D.B.
Page 347-8

Enter this
Nov. 18th 1899.
H A W Olsen

April 2, 1900

Received from Remington Bros. Atty

for Mohr Co.

Three & 50/100 Dollars

Sheriff's costs vs. Stevens.

$ 3 50/100

N. J. Milcham

Geer Machinery Co Complt } In Chan.

vs

G. M. Staines Defts

On motion of the complainant in this cause he is hereby awarded a non-suit, and said cause is dismissed at said complainants costs, without prejudice to their rights or remedies in any way in said cause; and it is adjudged, ordered and decreed that said complainant pay to said defendant the sum of five dollars for their false clamor in this cause, and the cause is stricken from the docket without prejudice to said complainants, and with leave for them to bring any future suit or action as they may be advised concerning the matters therein; and said complainants are given leave to withdraw from from the files of this cause the deed of trust & notes filed therein

Gunn Machinery Co

vs. } Decree No. 1

S. M. Staines

Entered on Ledger O.B.
No 6 Pages 380 & 81

Entered this
H. A. W. Steen

Virginia:

Lee County,to-wit:-

This day R.L.Pennington, agent and attorney for J.M.Greer, John G.Duncan,W.O.Greer, and E.W.Gillespie,partners in trade doing buisness under the firm name of Greer Machinery Co.,which said firm are complainants in a certain chancery cause this day instituted in the circuit court of Lee County against G.M.Stains for the recovery of certain specific property as well as a debt,which said debt is alleged to be a spcific lien upon a certain saw mill, engine,boiler and fixtures now situated on the lands of W.G.Colson about 4 miles east of Cumberland Gap,Tenn; personally appeared ~~RxlxPxxxxixxxxxx~~ before me,A.B.Muncy,Clerk of the circuit court of Lee County and made oath;

1st,that he verily believes the said claim of the said Greer Machinery Company to be just;

2nd,that he believes the said Greer Machinery company ought to recover from the said G.M.Stains the sum of $775.35,with interest thereon from the 8th day of Oct,1897,at least,all of which sum according to the terms of the contract sued upon is now due and oweing;

3rd,that to the best of his belief the said G.M.Stains is not a resident of the state of Virginia,but has estate and debts owing to him in Lee County, Va., in which the said suit is pending;

4th,that to the best of the affiant's belief the said G.M.Stains is about to remove the said Saw mil,engine,boiler and fixtures ,the specific property sued for,out of this state as well as all his other effects so that there will not,propbably,be therein effects of the said Stains sufficient to satisfy the claim of the said complainant when judgement is obtained shoud the ordinary

~~xxxxxxxx~~

process of law be resorted to.

Given under my hand this the 14th day of July, 1899.

A B Mussey

Clerk of the circuit court for Lee Co

Greer Moly Co. Corpd

v. { Affidavit for Attachment

G. M. Stocks Deft

Filed July 14th 1899.

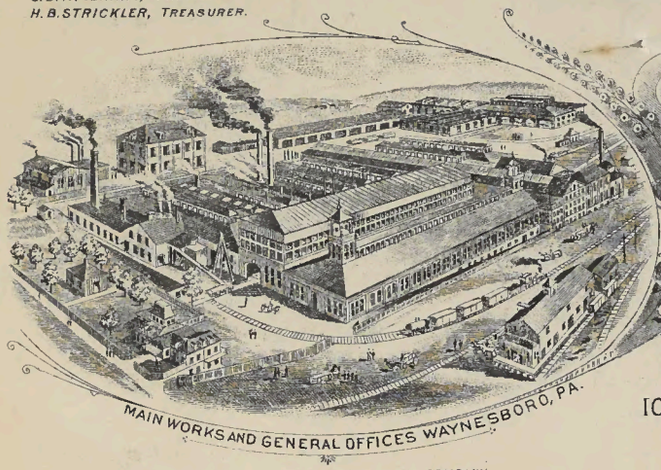
A. B. Munsey Clerk

(M 457)

S.B. RINEHART, PRESIDENT.
H.B. STRICKLER, TREASURER.

A.H. STRICKLER. VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A.H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853

FRICK COMPANY,

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated

Geo. M. Stains.

Waynesboro, Franklin Co. Pa. Dec. 15th. 1899.

Greer Machinery Co.,

Knoxville, Tenn.

Gentlemen:--

We return herewith the papers which Mr. Gordon received from you, relating to the G.M.Stains case, being the following letters from Montgomery & Arnold, dated July-13-1899, Aug-2-1899 and Agu-7-1899, also copies of letters from you to Montgomery & Arnold dated July-11-18-29, Aug-1 Aug-4 and Aug-9-1899, also Contract receipt given by Pennington Bros. for the G.M.Stains notes, said receipt appearing to have been sent by you July-12-1899 and containing the Contract of Pennington Bros. for the collection of the notes, also letters from Pennington Bros. to you, dated July-14-1899, two of which are July-29-99 and one of Aug-18-99.

Mr. Gordon also received from ybu several other copies of letters which we do not return, herewith, as you have the same in ycur letter book and we have not taken copies of those which Mr. Gordon brought with him.

Mr. Gordon also received some papers from Pennington Bros. relating to this case, which we are to-day returning.

We here call your attention to the following contained in your Agency Agreement for the year 1897.

G.M.Co. #2.

The Greer Machinery Co. agrees,

"To sell no machinery without taking the purchasers order for the same, on one of the order blanks of the party of the first part or second part, filled out in every particular, nor deliver any machinery to the purchaser until such order is accepted by the party of the first part and settlement is made by the purchaser in comformity with the terms of the order, and to be accountable to the party of the first part, on demand for the list price of any machinery sold and delivered in violation of this article, less commission."

On account of your having sold and delivered the machinery in violation of the article quoted, we kindly ask you to remit the list price of the same, less commission, with interest from the date of sale.

Messrs. Pennington Bros., after handing the above papers referred to, to Mr.Gordon, wrote us a letter in which they appealed to us to make some change in the Contract between you and them for the collection of the notes, putting it on the ground that litigation had arisen which was not contemplated when the Contract was made.

We quote from their letter on this subject as follows,

"You will see that Stains has asked in his answer that it be treated as a cross bill against you, and that they recover from you the sum of $600.00 thereby necessitating not only prosecution of one suit but also the defense of another. We are willing, however, to place our fee at a reasonable sum, just enough to pay us for our time, and we will say that we will prosecute the case and defend the cross bill for a fee of $50.00 certain, and our expenses, whatever they may be in attending to the taking of the proof, if we gain suit $25.00 this sum to be credited on the 10% commission, if it exceeds that sum, and the other $25.00 to go for the defense of the cross bill."

In answer to their letter, we have written Messrs Pennington Bros., stating the position which we have taken in this case and that we are not interested in the prosecution of the suit or suits which have been instituted by you, and that, if we made any agreement with them about their fees, we might prejudice our rights and complicate our case.

But we have further stated to them as follows:--

"We will cheerfully furhish any information that we can, or render any aid that we can consistently, in the prosecution of the case. We understand from Mr.Gordon that it may be desirable to prove that the Frick Co. 9 x 12 cylinder portable engine on sills delivered by the Greer Machinery Co., to Mr.Stains was not #6717. This we can do. All of our engines, regardless of style, size etc., are numbered consecutively. No.6717 was a 7 x 10 Eclipse Portable engine on wheels and was shipped from our Factory here to Jacob M.Baker, Harrisburg, Pa. on June-4-1897, under a lessee's order, dated May-28-1897, and if desired, we can no doubt trace this engine up and show just where it is. You will observe that engine No.6717 was not a 9 x 12, nor was it an engine on sills, but it was a 7 x 10 on wheels, and was shipped from here to Mr.Baker prior to the time that the engine bought by Mr.Stains was delivered. If there is any other information wanted from us, we will cheerfully furnish it."

We quote from one of the papers furnished Mr.Gordon by Messrs Pennington Bros., the following:--

"On consideration of all which, the Court being of the opinion that Frick Company should be made a party to the said bill, said defendents demurer in that respect is sustained, but on motion of said complainant, leave was granted them to amend their bill by making said Frick Company a party defendent to said bill, which was done at Bar, and Frick Company appeared to the same and waived process." Do you know by whom the appearance was made for us, and by whom the process was waived, and upon what authority the same was done.

We wish you would kindly answer this as specifically as possible, as it is information which we should have to enable us to determine just what course to take.

With respect to the cross bill, as it is evident that, if Mr. Stains recovers, it will be for matters with which we had nothing to do and over which we had no control and is a case in which you dealt with the property as if it was your own in all respects excepting the use of our name in the settlement which you are attempting to enforce in your own name, We suppose it is your intention to protect us. But if such is not your intention we should be promptly advised so that we may determine what position to take in the present suit. As we at present view the matter jurisdiction has not been acquired over us, but now that we

are advised of the appearance made for us, we should act promptly if we intend to take advantage of that. Please answer us explicitly. If you intend to protect us, we can safely let the appearance stand. Otherwise, we cannot, and you cannot find fault with us for taking whatever action we may deem necessary to save our rights and protect our interests.

Yours very truly,

FRICK COMPANY.

H C F R

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 302.

In the Clerk's Office of the Circuit Court of the County of Lee.

Greer Machinery Company Plaintiff,

against

George M Stains Defendant.

In Chancery

This day Robt L Pennington personally appeared before me, A.B. Munsey Clerk of the said Court, and being duly sworn, made oath that George M Stains defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 19th day of September 18____.

A.B. Munsey Clerk

FORM No. 302.

Greer Machinery Co

vs. { AFFIDAVIT FOR ORDER OF PUBLICATION.

George M Stanis

Pennington Bros p. q.

Filed Sept 19th 1899
A. B. Munsey
Clerk

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 301.

In the Clerk's Office of the Circuit Court of the County of Lee on the 19th day of September 1899.

Greer Machinery Company Plaintiff,
against
George M Staino Defendant. } In Chancery

The object of this suit is to attach a certain Saw Mill engine, boiler and fixtures thereto, sold by the plaintiff to the defendant on which the plaintiff holds a lien for the amount sued on in the plaintiff's bill, and to collect said debt so sued on, and to have sold the said property so attached.

And an affidavit having been made and filed that the defendant George M Staino is a not resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the South-West Virginian, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the ~~Circuit~~ County Court.

A copy—Teste:

Pennington Bros p. q. A. B. Munsey Clerk.

FORM No. 301.

Greer Machinery Co

vs. ORDER OF PUBLICATION.

George M. Stains

Virginia Lee County to-wit
I A.B. Munsey Clerk of the Circuit Court for Lee County do hereby Certify that I posted a copy of the within at the front door of the Court house of Lee County Va on the 1st day of October term of the County Court for Said County.

A.B. Munsey
Clerk

Everett Waddey Co., Stationers and Printers. Richmond. Va } Form No. 300—Special

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon G. M. Stains

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the 3rd Monday in December, 1899, to answer a bill in chancery, exhibited against him in our said court by J. M. Greer, J. G. Duncan, W. O. Greer and E. W. Gillespie partners in trade under the firm name of Greer Machinery Company assignee of Frick & Co. Incorporated

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 11th day of November 1899, and in the 124th year of the Commonwealth.

A. B. Munsey Clerk

The plaintiff in this suit having made affidavit as required by law it is hereby ordered that the officer to whom this process is directed to attach the estate of the defendant especially the following estate to-wit; one Frick company 9" X 12 cylinder Engine & Boiler on Sills No 6717 also one No 1 Frick Company Saw Mill complete with all its fixtures also one 60ft one inch pipe, 80 feet 12 inch 4 ply rubber belting, and any other estate that may be found belonging to said G. M. Stains in whosoever hands found or so much thereof as may be necessary to satisfy amount of $ 75-5-35; with interest thereon from 4th day of October 1897, as claimed in this suit, and the subject keep to answer the future order of this Court. And make return of this attachment at the rules to be held for the Circuit Court of Lee County on the 3rd Monday in December 1899.

And have there then this writ. Witness A B Munsey Clerk of our said Court at the Court-house the 11th day of November 1899, and in the 124th year of the Commonwealth.

Teste: A. B. Munsey Clerk

Executed by delivering a copy of the within to G. M. Stains and levying the attachment on all the above described property except engine on Sills No 6717 but did levy on engine on Sills No 6716. Executed 13th day of November 1899.

C. W. Bell D. S. L. C.

Jos W. Wilkinson S. L. C.

Form No. 300.

Green Machinery Co

vs.

G. M. Stains

SUBPOENA IN CHANCERY.

Pennington Bar p. q

To 2nd December Rules.

Circuit Court.

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon G. M. Stone

to appear at the Clerk's Office of the Circuit Court of the Lee of Lee at the rules to be held for the said Court on the 2nd Monday in August, 1899, to answer a bill in Chancery, exhibited against Stone in our said Court by J. M. Greer, J. G. Duncan, W. O. Greer, and E. W. Gillespie partners in trade under the firm name of Greer Machinery Company, assignees of Frick & Co. (Incorporated)

And have then there this writ. Witness, A. B. Munsey Clerk of our said Court, at the court-house, the 14 day of July 1899, and in the 124 year of the Commonwealth.

A B Munsey Clerk

The plaintiff in this suit having made affidavit as required by law, it is hereby orderd that the officer to whom this process is directed, do attach the estate of the defendant especially the following estate, to-wit, one Frich Company 9" x 12" cylinder Engine & Boiler on sills no.6717, also one no 1 Frick Co., saw mill complete with all its fixtures, also one x 60", 8 x 9 solid tooth atkins saw, 2 cant hooks, 1 pipe wrench, 60 ft 1 inch pipe, 80 feet 12 inch 4 ply rubber belting, and any other estate that may be found belonging to the said G.M.Stains in whosoever hands found, or so much as may be necessary to satisfy the amount of $775.35, with interest thereon from the 8th day of OcT. 1897, as claimed in this suit, and the subject keep to answer the future order of the court. And make return of said attachment to next term of this court.

Tese: A. B. Munsey Clerk.

Form No. 300.

Aver Mchy Co

vs.

G. M. Stains

SUBPOENA IN CHANCERY.

Pennington Bros p. q.

To 3rd August Rules

Lee Circuit Court.

Rec'd from clerk July 15 1899 at 8.20 A.M.

W. J. Milchem S. L. C.

Executed on July 16 1899 by delivering attested Office copies of the within spa to W. G. Colson in whose possession the property hereinafter described; and further executed by levying on one Frick Company 9x12 cylinder Engine & Boiler on sills No 6717 also one no 1 Frick Co., saw mill complete with all its fixtures, also one 60" 8x9 solid tooth atkins saw, 2 cant-hooks, 1 pipe wrench, 60 ft. 1 inch pipe, 80 feet 12 inch 4 ply rubber belting, not executed as to G. M. Stains he not being found, having left the Commonwealth.

Gerry Saylor D.S.L.C.
for W. J. Milchem

CERTIFICATE OF ORDER OF PUBLICATION.

I, A. M. Goins, Editor of the SOUTH-WEST VIRGINIAN, a weekly newspaper published at Jonesville, Lee County, Va., do hereby certify that the annexed notice was published in said paper once a week for four successive weeks, commencing on the 21st day of Sept., 1899.

A M Goins, EDITOR.

FEE, $5.00

VIRGINIA—In the Clerk's Office of the Circuit Court of the County of Lee, on the 19th day of September, 1899.

Greer Machinery Company, Plaintiff,
VS. } In Chancery.
George M. Stains, Defendant.

The object of this suit is to attach a certain saw mill, engine, boiler and fixtures thereto, sold by the plaintiff to the defendant, on which the plaintiff holds a lien for the amount sued on in the plaintiff's bill and to collect said debt so sued on and to have sold the said property so attached to pay said debt.

And an affidavit having been made and filed that the defendant George M. Stains is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a a copy hereof, be published once a week for four weeks in the South-West Virginian, and that a copy be posted at the front door of the courthouse of this county on the first day of the next term of the county court.

A copy—Teste:
A. B. MUNSEY, Clerk.

Pennington Bros. p. q. sep 21 4t

ORDER OF PUBLICATION.

Green Machinery Co.

VS. | IN CHANCERY.

Geo. M Stamm

FEE $5.00

To the Honorable H. A. W. Skeen,

Judge of the Circuit Court of Lee County, Virginia.

Your orator the Pennington Gap Improvement Company, a Virginia corporation, humbly complaining, would respectfully show unto your Honor that heretofore, to-wit: at the second February rules, 1900, it filed its original bill in chancery in your Honor's said court for Lee County against the Louisville & Nashville Railroad Company, a corporation organized and existing under the laws of the state of Kentucky, and A. Johnson, the general object of which bill was to rescind and set aside a certain deed from your orator to the said railroad company dated August 25th, 1890, recorded in Lee County D. B. 29, p. 482, and filed as an exhibit marked deed with said bill. Thereafter, to-wit: at the June term, 1900, of said court a demurrer was sustained to said bill, and leave was granted your orator to file an amended bill. Your orator refers to said original bill and prays that the same may be considered as a part hereof as fully as if copied at length herein, and it files this as its amended bill in said cause pursuant to the leave granted by your Honor at the said June term last.

Your orator would show that the main purpose of the incorporation of this company was to acquire real estate in and around Pennington Gap in Lee County, and to subdivide the same into blocks, lots, streets and alleys forming a suitable and convenient town plat; that pursuant to the purpose of its incorporation it did acquire a considerable strip of real estate at said point on the line of the right of way of the L. & N. R. R. and extending from the gap or water ~~xxx~~ level pass in

Stone Mtn. known as the Pennington Gap about two miles to the said right of way of said railroad company and around the point now incorporated and known as the town of Pennington Gap. It acquired this land in the early part of the year 1890 and a short time prior thereto. The said Stone Mtn. is a large and rugged range which puts off from the Cumberland Mtn. some 10 or 20 miles west of Pennington Gap and extends in a north-east direction about 20 miles to Big Stone Gap, and then on many miles further to the north-east. This mountain together with the Cumberland Mtn., of which it is in reality a part, forms an almost impassable barrier to railroad building from Cumberland Gap about 50 miles west or south-west of Pennington Gap, thence the entire distance above set forth in a north-easterly direction beyond Big Stone Gap. This mountain range forms a clearly defined boundary between the coal measures of South-Eastern Kentucky and South-Western Virginia on the west or north-west of said range, and the iron measures on the East or south-east thereof. Pennington Gap and Big Stone Gap are the only two points in the entire range from Cumberland Gap eastward, a distance of some 80 or 100 miles, where it is possible certainly where it is practicable, for railroads to be constructed through said range. At both these places the waters of Powell's River break through said mountain and form a natural passway through which railroads may be constructed. The pass at Pennington Gap is narrow and extremely rugged. A very practicable and comparatively cheap route can be had for only one railroad but no more. After this one road or right of way shall have been obtained, the great cost if not the practical impossibility of securing a second or additional

right of way through the mountain at this place would prevent any second railroad from attempting to build through the mountain at that point. Immediately to the north-west of said mountain at this place lies a large area of land embracing something like one hundred square miles, known locally as the Pocket and upper and lower Grab Orchards, which consist almost entirely of high ridges and spurs from said Stone Mtn. and from Little Black Mtn., a range of mountains parallel with the Stone Mtn., which at this place form the boundary line between Virginia and Kentucky, and this entire territory is stratified with as fine bituminous and coking coal as is found anywhere in the United States, and in addition to this it possesses an almost virgin forest of the finest timber.

Your orator realized the stragetic advantage of acquiring this pass in said mountain and the approaches thereto, and of acquiring a town site at the mouth of this pass and on the right of way of the L. & N. R. R. which was then building the first and only line of railway which had then been or has since been constructed in this section. It foresaw clearly that capital seeking profitable investment would shortly seek to build a railroad into these coal fields and forests, and that the only practicable or possible way to do so would be through this pass in the mountain. It further foresaw that with the development of these coal fields and forests a town of considerable importance must of necessity be built at the point of juncture between the main line of the L. & N. R. R., which runs up the valley on the south-east side of said mountain and, as aforesaid, at a distance at this point of about

two miles from this pass. With the view, therefore, to take advantage of the conditions above named your orator acquired the land through the larger portion of said pass and the approaches thereto on the south and east, and a considerable body of land well adapted for the purposes for a town site at the present town of Pennington Gap.

The said railroad company had by an act approved March 30th, 1887, passed by the Legislature of Virginia (See Acts '87,p.19) obtained an ennabling act authorizing it to build into the state of Virginia and giving it authority to build branch or lateral lines from its main branch line so extended into Virginia. Your orator refers to the aforesaid special act of the legislature as a part of this bill and prays that it be read in connection herewith as fully as if copied at length. From an inspection of this act it will be seen that said railroad company was required to begin the work of constructing its main line of railway into Virginia within two years and to complete the same within five years from the date of said act, otherwise the rights and privileges granted should cease and become void. A year or more prior to August, 1890, the said railroad company had located its right of way and acquired title therefor through Lee County from Cumberland Gap to the eastern end of Lee County near Big Stone Gap, and by said month had fully completed its roadbed through said county, including that portion of its roadbed at and adjacent to the present town site of Pennington Gap. A short time prior to August 25th, 1890, and after your orator had acquired the land for its town site and the approaches to the said pass as aforesaid, the said railroad company through its agents ap-

proached your orator with a view to acquire a right of way from it from some point on its main branch line through said pass into the coal and timber fields to the north-west. Said company represented to your orator that its main branch line would be completed within a short time (and in fact it was completed in the spring following and has since been operated), and that it was its purpose to build a lateral or branch road through said pass into said coal fields in a short time after its main line was completed if it could acquire the desired right of way from your orator. Your orator was anxious to promote the development of the country, and was willing to offer all reasonable inducements to said railroad company to aid in said development, and trusting to the good faith of said company it entered into and executed the deed of August 25th, 1890, a copy of which is filed in this cause with your orator's original bill, whereby your orator granted to said railroad a right of way one hundred feet in width from the point on its main line ~~daixad~~ desired by said railroad company through your orator's town site lands and through the approaches to said pass and into and to about midway of the said pass itself; and it further procured one William [illegible] Pennington to convey to said railroad company a right of way through the remainder of said pass and the approaches thereto on the north-west, said Pennington being the owner of said land at that point and acting in harmony with your orator in that matter. At the time this deed was executed your orator insisted that a time limit be put in the deed within which said branch road should be begun and completed or else said right of way should revert to your orator, but the officers and agents of said

railroad company who were negotiating with the officers of your orator stated that this was unnecessary, since the enabling act of the Virginia legislature under which they would operate required them to begin such extension within two years and complete the same within five years. The officers of your orator understood this to mean that the said ~~two years and~~ Branch lines should be completed in ~~xxxx~~ five years from the date of said act ~~referred to the date of the grant for the~~ ~~beginning of the work upon the main line & the branches & laterals as well,~~ ~~right of way then under negotiation~~, and they believe that the officers and agents of said railroad company likewise believed the same at that time. Your orator thereupon consented to execute the deed in its present form and waived the point it ~~which~~ had first insisted upon of expressing said condition in the deed. Your orator charges that the failure to put this condition in the deed was the result of a mutual mistake on the part of both the officers and agents of the railroad company and the officers of your orator, a mistake not of the legal effect of the law but what the law itself was.

From an inspection of this deed your Honor will see that the only consideration (except the nominal consideration of $1 which was never paid to your orator) was:

> "The fact that said L. & N. R. R. Co. has located and proposes to construct the Crab Orchard Branch of the Cumberland Valley Extension over the lands of the said party of the first part and others situated and lying in the county of Lee and state of Virginia, and the advantages to be derived therefrom to said party of the first part."

And it was further provided that your orator did thereby:

> "Release said L. & N. R. R. Co., its successors and assigns from any further payment for or on account of the appropriation and occupancy of said strip of land, as well as for all damages that may accrue by or result from the location and construction of the said Crab Orchard Branch of the Cumberland Valley Extension of the L. & N. R. R. over and upon said strips or parcels of land."

At the time said deed was made the said railroad company had, as will appear from said deed, accurately made its surveys for said branch road and had named the same the Crab Orchard branch, and in every way and by all its acts it led your orator to believe that it would within a reasonably short time go forward and construct said Crab Orchard branch. Your orator in making this grant to said railroad not only conveyed to it the only feasible right of way through said pass or the portion thereof owned by your orator, and the immediate approaches thereto, but said right of way also embraced the only practicable route through a range of high lands or hills which lies between the said main line of railroad and the immediate approaches to said pass in the mountain. The land actually conveyed to the said railroad was worth a considerable sum of money, but its chief value lay in its peculiar stragetic position and is such that it cannot be estimated in damages.

Your orator relying on the good faith of the railroad company in the matter proceeded to lay out its town site lands into blocks, lots, streets, alleys and boulevards, making them all conform in the plat of its property to the special and unusual grant it had previously made, to-wit: on August 25th, 1890, to said railroad company. It constructed its said plat upon the theory and belief that within a short time, viz: from 2 to 5 years a railroad would be constructed and operated over said right of way, and that the extra strips and triangle of land referred to in said deed and in the original bill in this cause would be used by said railroad company

for its switches and local ~~xxx~~ railroad yards, which was the design of both parties to said deed. It sold large numbers of its lots principally upon the theory and belief that said Crab Orchard branch would be built and the town ~~xxxxxxxxx~~ benefited and improved thereby, as every one knew would be the case if said road was built. The result of all this has been that a considerable town has been built up at this point on the town site lands of your orator, and your orator has expended large sums of money in laying out and grading and improving the streets and side-walks and making all the usual expenditures incident to a new town site. Your orator has expended in these improvements all or a large part of the proceeds of the sales of lots made by it, all of which was done in the belief and expectation that your orator would be reimbursed for the same when such branch railroad should be built and the increase in the growth of the town incident thereto would be realized. As stated in the original bill herein, however, said railroad company has not yet, although more than ten years has elapsed, done any act or indicated any purpose of building said Crab Orchard branch, although your orator has often reminded said company of its ~~purpose~~ promise and urged it to fulfill the same, and has requested it if it would not build said branch to re-convey said right of way to your orator so that it could procure, as it believes it could do, some other company or association of individuals to build and operate said branch road. The growth of said town has been greatly retarded by the reason of the failure of said railroad company to carry out its promise, and your orator has lost the sale of many thousand dollars of property that it would have sold if

had said company either built this road or re-conveyed this right of way to your orator so that it could have procured some other company to build the same and develop the territory adjacent to said town.

Your orator would further state that the aforesaid land was conveyed to the said company for none other than railrodd purposes. The said triangle of land is in the center of the original town site of your orator and in the center of the town as it has now grown up. Instead of devoting this land to railroad purposes according to the intention of the grant, said company has leased said land to one A. Johnson, who has inclosed the same with a rough and unseemly fence and has regularly raised crops of corn and other crops thereon, and has built a barn and other out-houses thereon which is not only a perversion of the purposes for which the land was granted but is an injury to your orator not capable of being estimated in damages. It is not only an eye-sore to those people who have purchased lots from your orator and built upon them, and who now live thereon, but it deters others who might otherwise purchase lots from your orator for building purposes from doing so.

The consideration for which this grant was made has ~~badly~~ wholly failed and, as your orator has hereinbefore shown, redress will not lie in damages. The representations made by the said railroad company to induce your orator to make this deed have turned out to be false. These representations were the sole inducement that caused your orator to make this valuable grant. Your orator relied upon these inducements and believed the representations to be true. ~~They~~ It do not know whether said

railroad company knew at the time it made these representations that they would not be fulfilled, but it is advised that this is not material since in fact the said company did not on its part carry out the promises made as the inducement to said conveyance. Your orator is further advised that while this contract of conveyance is executed as to it, the consideration therefor was executory on the part of said railroad company, and in said deed itself there is an implied if not an express covenant to build said Crab Orchard branch, which covenant will be construed by a court of equity as one that must be performed within a reasonable time even though no time is fixed in the deed itself for its performance; that ten years is a reasonable time, and that the said railroad company has delayed an unreasonable length of time in any view that may properly be taken of the circumstances leading up to and following this agreement; and that your orator's only remedy is to be placed in statu quo, and to have said land re-conveyed to it by said company.

WHEREFORE the prayer of your orator is that the said Louisville & Nashville Railroad Company, a corporation, and A. Johnson be made party defendant to this amended bill and be required to answer the same but not on oath, as that is waived; that at a hearing hereof your Honor will render a decree requiring the said railroad company to re-convey to your orator all the land conveyed by the aforesaid deed of August 25th, 189D, and in default of the said railroad company not making such conveyance within a reasonable time, that a commissioner be appointed by your Honor to re-convey said land to your orator; and for costs and such other, further and general relief as to equity may seem meet and the nature of its cause may require your orator will ever pray &c.

-10-

Running Bros
Orr & Irvine

Pennington Gap Imp.Co., Complts.

vs.: Bill In Chancery

Louisville and Nashvill R.R.Co.

1900, 2nd October rules amended
bill filed Spa executed
& Decree Nisii
11 1st November rules taken
the last Monday in Oct
D. N. Confirmed & Cause
Set for hearing

E.W. PENNINGTON. ROBT. L. PENNINGTON.
Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GAP, VA.

To the Honorable H.A.W.Skeen, Judge of the Circuit
Court of Lee County Virginia:

The demurrer of the Louisville & Nashville Railroad Company to the amended bill exhibited against it and A.Johnson in this Honorable Court.

Tesepondent is advised that said amended bill is not sufficient in law to call upon it to answer in this Honorable Court, and in addition to the cause of demurrer assigned to said original bill which respondent here adopts as a part of the demurrer to both said original and amended bills, respondent says:

1st. That no additional grounds for the relief prayed are assigned in said amended bill, that were not set up and pleaded in said original bill;

2nd. The deed filed as an exhibit with the bill both declares and imports a consideration, but even a want or failure of consideration is no ground for avoidance of a conveyance between parties unless a fraud was perpretrated by the grantor on the grantee, and no fraud is alleged in this bill:

3rd. Ignorance or mistake of law does not affect contracts or conveyances. The doctrine is that if they are entered into in good faith and free from misapprehension of facts, although under a mistake of law they are valid and cannot be rescinded. There is no allegation in the bill that said contract was entered into under any misapprehension of fact?

4th. Court of equity has no jurisdiction to grant the relief prayed for, or to grant any other relief. The contract mentioned in the bill is an executed contract and if there is a failure of considaration, or if the defendant has in any way failed to comply with its contract or its legal duty a court of law affords an adequate remedy in damages.

L. T. Dameron
for Deft

L & N R Co

ads Dunnican

Pen. Gap. Impt Co

Filed in open court and by leave thereof Novr the 15th 1900.

A B Mumsey Clerk

To The Honorable H.A.W.Skeen, Judge of the Circuit
Court of Lee County, Virginia

The demurrer of the Louisville & Nashville Railroad Company to a bill exhibited against it and another in this Honorable Court.

Respondent says that it is advised that said bill is not sufficient in law to call upon it to answer in this Honorable Court, because

First:- No right is shown by said bill to be vested in the Complainant to have or demand the relief prayed for.

Second:- Said deed filed by the plaintiff as an exhibit with its bill shows on its face to be a complete, absolute and unconditional Conveyance, by which said Complainant parted with all its right, title or interest in and to said land, and after the execution of said deed it had no further interest in or to said land, and can maintain no action in regard to it.

Third:- If said Respondent has taken land which is not necessary for its purposes, or if it is using land improperly the remedy is in the state, by way of escheat upon proceedings had for that purpose.

Fourth:- There is no limitation by the terms of the act authorizing respondent to build its road through Lee County, to the time when it shall commmence or complete branch roads from its said line.

Fifth:- If said Company has forfeited its charter and said land has reverted to and become vested in complainant such forfeiture and vesting is absolute and there is nothing in respondent to convey back.

Louisville & Nashville Railroad Company

By Counsel.

L. & N. R. R. Co.

&c. { Demurrer

Pennington Gap. Imp. Co.

Filed in open court and
by leave thereof June
the 12th 1900.

A. B. Munsey Clerk

To the Honorable I.A.W.Skeen judge of the Circuit Court of Lee county Virginia:-

The separate answer of the Louisville and Nashville Railroad company to a bill exhibited against it and another, in this honorable court by the Pennington Gap Improvement company, both Plaintiff and Defendant being corporations.

Respondent, the said Louisville & Nashville Railroad Company, saving the benefit of its demurrer, this day filed in said cause, to the amended bill and here adopting its demurrer heretofore filed to the original bill, and not waiving either, but relying and insisting thereon, and likewise saving the benefit of all exceptions which can or may be had to said original and amended bills for the many misstatements of facts and errors of law contained therein for answer thereto, or to so much thereof it is advised it is material or necessary to answer, answering says:

That it is true that at the February rules, 1900 the said complainant filed its original bill in this court against this respondent and A.Johnson. Respondent supposes the general object of said original bill was to rescind and set aside the deed executed by said complainant Company on the 25th day of August, 1890, though it would be hard to ascertain from a reading of said bill what its real object was. It is true that a demurrer was sustained to said bill at the June term of your Honor's Court, and that leave was granted the said Complainant to file an amended bill.

Respondent supposes it to be true that the main purpose of the in corporation of the Complainant company was to acquire real estate in and around Pennington Gap in Lee County, and to sub-divide the same into blocks, lots, streets and alleys forming a suitable and convenient town plat; it is further true that pursuant to this purpose it did acquire considerable real estate at said point and on the line of the right of way of your respondent's road, and in this purchase of property it is true that said complainant became the woner of the land through, over and upon which it granted the right of way described in said deed, which extends to a point at or about the foot of the Stone or Cumberland Mountain; it is further true that this mountain is large

and rugged and is pretty accurately described by said complainant's bill, but it takes up too much space in this answer and more time it is imagined than the Court would like to devote to the subject should this respondent undertake to follow the geographical range of this mountain or its geological formation as so eloquently indulged in by the complainant. It is sufficient to say thatat Pennington Gap what is known as the North Fork of Powells river breaks through said mountain, and that this water cut through the same affords a practical route for a railroad. Respondent denies that the pass at Pennington Gap affords only a practical location for one railroad and no more; it denies that after one road shall have been built through said gap that the cost of another road would make it practically impossible to be built, but upon the contrary resonpdent avers that two roads may be very well built through said pass and that the cost of the one would not be greater than the cost of the other provided they were both equally well built, In fact in the year 1887 a road was surveyed and practically located through said gap on the opposite side of the river from where the present right of way of respondent's Crab Orchard branch is located, but respondent is at a loss to know what all this great eloquence of description and feasibility of railroad construction has to do with the question involved in this suit, because the land of the plaintiff Company only extends to the mere entrance of said gap or pass and does not go through it or even to its difficult and narrow places. It is a fact that up to the point where complainant's northern boundary line extends, it is perferctly feasible and practicable to build at the very least four railroads and perhaps six. And respondent avers that the line of railroad as located by it from its main Cumberland Valley Division is not either the most practicable, feasible or easily and cheaply constructed road that could be built from said main line through said gap. The most feasible road that could thus be constructed would be a line of road starting from this respondent's main line east of its bridge across the North Fork about one mile east of the town of Pennington Gap and running up the east side of said stream and thus entering the gap which would not touch complainatn's land perhaps at all, and certainly would miss their town by a mile or more. It was

This was the route that this respondent contemplated adopting and building its road upon, and it was to avoid this very contingency, as respondent has been informed, that induced said complainant to approach respondent and ask it to lay out a road on its present survey and accept from said complainant a right of way for said road.

One of the main purposes of said complainant company, as respondent is informed, and as its charter declares, was the laying out of a town at the place where the town of Pennington Gap is now located, and the sale of lots. In order to make this scheme a success it was necessary to get the assistance and good will of this respondent, and secure the erection of a depot on its land, and to further advertise its town building and lot selling scheme, its agents & officers represented to this respondent the exceeding richness of the coal fields lying beyond said Stone Mountain in the Pocket and Crab Orchard country and represented to respondent that large parts of said coal lands had been bought up and were then owned by parties and companies who were able to and intended to work them, and they asked and induced your respondent to locate a road through said pass to said coal-fields, from their said town, and agreed that if respondents would do so they would convey to it a right of way for a main line and for a "Y" and other necessary purposes. This was done by respondent and as a result thereof and in consideration therefor the deed of the 25th of August, 1890, was executed. Your respondent relied upon the representations of said complainant and believed that said coal-fields would be developed, and in good faith it purposed building said road, and to this end it made overtures to said coal companies and the parties who had bought land in said coal-fields and notified them that it was ready to build said branch road at any time they would develope their property and give reasonable assurance that they were able and intended to work them. There is no question but what the coal-fields north of the Stone Mountain through the Pocket and Crab Orchard country to the top of the mountain which forms the boundary line between Virginia and Kentucky is rich in bituminous and coking coal but whether it is as rich as is found any where else in the United States, respondent does not know, in fact it doubts the proposition. But respondent denies that said

country is now almost a virgin forest of the finest timber, on the contrary it asserts that almost all of the valuable timber that ever grew there has been cut and carried out.

Respondent is not advised of the amount of strategy used by complainant in acquiring the property that it did acquire, nor does it know what selfish purposes actuated it in attempting to control the approaches to said gap, nor does it know how clearly it foresaw that capital seeking investment would shortly seek to build a railroad into said coal-fields, nor is it aware with what certainty of foresight it foresaw that the developement of these coal-fields and forests would stimulate the building of a town on their property, but it does know that said complainant used considerable strategy in procuring from this defendant the location and construction of a depot at their present town site and the location at considerable expense of a branch line of road from that point to said coal-fields, and it does know that said complainant company has displayed considerable strategetic skill in laying down said located line of railroad upon its town plat which said company has used with great skill as an advertisement of its town site, and town lots. Respondent denies, however, that said complainant acquired the land through the larger portion of said pass or through any part of it except merely into the mouth of said pass on the south side, and that only for one or two hundred feet, but whatever the foresight of said complainant company that part of it which painted in roseate hues and glowing colors the early developement of the coal-fields in the Pocket and Crab orchard has so far been a failure, and if capital has been there invested it has as yet sought no outlet, or if it has it has kept its design hidden from this respondent who has all the time been ready, willing and anxious to build a road from the town of Pennington Gap or from a point east thereof to said coal-fields but so far nothing has been offered to compensate for said outlay or to induce said defendant to consider the expenditure reasonable

It is true that this respondent was by an act of the legislature of Virginia authorized and permitted to extend its railroad into the state of Virginia. It is likewise true that the same act which author-

izes it to construct its road into Virginia and to connect with other lines of railroad then or thereafter to be built, gave it aouthority to build branch or lateral lines as it saw proper. It is true that an inspection of this Act will disclose the fact that your respondent was to begin the work of constructing its mian line into Virginia within two years and to complete the same within five years from the date of said act, both of which things it did. It is true that respondent had procured its right of way, or most of it, was at work on the constructin of its road bed in August, 1890; that a part of its work was adjacent to the present town of Pennington Gap. How far said work had progressed towrds the completion of the road bed ready for the ties and iron respondent does not remember. It is not true however, that this respondent approached, prior to the 25th day August 1890, orrat any other time said complainant with a view to acquire a right of way from it from some point on its main line through said pass into the coal and timber fileds of the northwest. Respondent knew that said complainant company only owned the land on the south of said pass and that ~~they~~ it could not grant right of way over lands which ~~they~~ it did not own, but on the contrary, complainant company was instrumental in having said Crab Orchard branch located and voluntarily proposed the granting of a right of way through such lands as ~~they~~ it owned, as an inducement to said location and hoped for construction. It is true that respondent contemplated on August 25th 1890, that its main line would be completed as it was, at an early day, but it did not represent that it was its purpose to build a lateral or branch road through said pass into said coal-fields in a short time after its main line was completed, if it could acquire the desired right of way from complainant, but on the other hand respondent through its agent, expressly and positively told said complainant that it would not buld said branch road through said pass into said coal-fields until there was such developements made and assurances given as would justify a construction and the expenditure of the money necessary therefor. Respondent denies that any anxiety upon part of said complainant to develope the country induced it to grant said right of way, but it admits readily that a desire on the

part of said company to develope its own property, to induce the sale of its lots, and enhance the price thereof, was the great and moving cause which actuated said company in its munificent gift.

Respondent says that it is true that said complainant made and exceuted the deed of August 25th 1890, whereby it granted to this respondent a right of way 100 feet in width from its main line through the lands of said complainant to the northern boundary thereof, but it is not true that said right of way extends into and about mid-way of said pass itself, but on the contrary, as before stated, said right of way extends barely into the mouth of said pass; it is not true that said complainant procured William Pennington to convey to your respondent a right of way to ~~###~~ or through the remainder of said pass and the approaches thereto on the northwest side therof, or if it is true respondent has no knowledge of it and never heard of it until the filing of this bill. It is true, however, that the said William Pennington did convey by deed duly executed to this respondent a right of way for its said Crab Orchard branch through his lands lying in said pass known as Pennington Gap and extending from This southern or southeastern side of said mountain to the the northwestern side, and so far as your respondent is advised he has never complained of his act and is standing squarely by the same. Respondent has no knowledge of the fact, ~~##it is of the deed executed~~ of what occurred at the time said deed was executed or of the various words used at the time. Said complainant may have asked and insisted that a limit be put in said deed within which said branch road should be begun and completed, but if it did said terms were not accepted and were expressly waived by the complainant when it made and executed said deed, but respondent emphatically denies that its officres and agents who were present at the execution of said deed, one of whom prepared it, stated "that this was unnecessary, since the enabling act of the Virginia Legislature under which they would operate required them to begin such extension within two years and complete within five years", but on the contrary this respondent is informed, believes and avers it to be true that its officers and agents who were present at the execution of said

deed, positively and emphatically told said complainant or its agents and officers then present that they would not accept for respondent a deed with a time limit in it in which said road was to be completed, that said road could not and would not be built until there was such developements in the coal-fields and such assurances given of intention and ability to work said coal-fields on the part of the owners thereof as would justify the expenditure of the money necessary to complete, equip and operate such branch road, and said agents further informed said complaiant's officers and agents then present that if they want the road built at an early day that it would be well for them to go to work and use their influence with the owners of said coal-fields to get an early developement of the same. Respondent accepted said deed in good faith intending to build said road as soon as there was any developement in the Country north of said Stone Mountain as would justify the outlay necessary for that purpose. That is its purpose now and it would be utterly foolish and of no benefit to the town of Pennington Gap or any one else to build a railroad through said pass into said coal-fields until such time as the owners thereof got ready to open, develope and work the same.

Respondent does not know what the officers of complainant understood to be meant by the act of the legislature in puting a five years limit in the act granting to this respondent the privilege of extending its road into Virginia, but it cannot possibly see how said officers ever imagined said five years for "completion" could apply to branch or lateral lines when the act itself expressly confers on this respondent the right of constructing <u>from time to time</u>, and operating such branches and laterals as may enable it to connect the said extension with mining, manufacturing and other operations. Respondent denies that its officers and agents believed that said act was subject to any such construction. If said limit, contained in said act applied at all it applied equally as strong at one end as at the other and made it as equally binding on respondent to commence its work within two years as it did to complete it within five years from the

date of said act, and if the complainant was giving to said act, at the time, the construction which it now says it was giving to it, it knew that respondent could not comply with said act because three years and more from the passage of said act had already rolled by. Respondent believes that this whole contention now set up of mistake &c. is a subteffuge and a plan adopted by the complainant at this particular time when it has ascertained that Calvin Pardee, a Pennsylvania capitalist, has bought a large amount of coal lands in the Crab Orchard with the expectation of developing the same, thereby requiring the building of a railroad from your respondent's main line to the same, with the hope that complainant will set aside this deed and then when said railroad comes to built, mulct some company in heavy damages for right of way through its land.

Respondent will now show your Honor that complainant in its bill expressly declares that it waived the point it had first insisted upon of embodying said condition or time limit in said deed, Having waived it then with its eyes wide open, it must be held to stand to its solemn acts declared under its seal.

Respondent expressly denies that the failure to put this condition, or time limit, in said deed was the result of a mustual mistake upon the part of the officers and agents of either of said contracting parties, either as to the effect of the law or the law itself, and respondent knows no difference between a mistake of the legal effect of the law and the law itself.

It is true at the time said deed was made, respondent had surveyed and located a road through Pennington Gap and had named the same its Crab Orchard branch, but it denies that it had in every way or in any way either by acts or otherwise led complainant to believe that it would construct said Crab Orchard branch in a short time or in a reasonable time, unless there were such developements in the coal fields north of the Stone Mountain as would justify the same, and respondent avers that it wold only be reasonable that it should build said branch road when there was something to build it to that would give it business sufficient to justify the construction thereof.

Respondent denies that said complainant conveyed to it the only feasible or ######## practicable route through said pass. Respondent supposes it to be true that said lands embraced in said strip conveyed to it was and is worth some money, how much respondent is, like plaintiff, unable to say, but whatever this value may be, respondent denies that it has any peculiar value by reason of stragetic position. Respondent supposes it to be true that in laying out its town site into blocks, street and allies, if it has a boulevard respondent has never heard of it before, that it made them conform on the ground and on its plat to the grant which it made to your respondent on the 25th day of August, 1890, at least an examination of its plat will show this line of railroad laid down and said plaintiff, as respondent is advised, used the fact of the location of said road and the grant that it had made for the right of way as one of its principal advertising cards. But respondent denies that it constructed its said plat upon the theory and belief that in a short time, viz., from two to five years, ######## a railroad would be constructed upon and operated over said right of way. Respondent does not know and has no personal means of knowing how many lots complainant has sold, nor does it know what was the principal theory upon which they were sold, but it presumes they were sold at a satisfactory price, and if they were sold upon the theory that said Crab Orchard branch had been located and was expected to be built, respondent can see no damage done to complainant, it has heard of no dissatisfaction on the part of said lot purchasers, respondent admits that this sale of lots, and the enterprise of the purchasers has built up a town of some size at said place, this result has been obtained by no assistance on the part of said town company. Respondent denies that said complainant has expended large sums of money in laying, grading and improving streets and side walks and in making all the usual expenditures incident to a new town site. It is true that said complainant, as respondent is informed, in a way, graded two short streets. If it ever built a side walk or assisted in doing it respondent has not been informed of it. Instead of making streets they have fenced them up. Instead of making side walks they have depended upon the citizens of said town and the taxes imposed upon this respondent to make all the

improvements that have been made in said town.

Respondent denies that complainant in making said improvements has expended all or a large part of the proceeds of sale of lots made by them. It is true however that complainant has largely profited by its expectations and representations as to the location and construction of said branch line of railroad, and it expected to profit more largely thereby. In this allegation of expectation and belief said complainant gives the key note to its action in making said conveyance. It shows clearly that it made said deed as a matter of speculation and that being the case, if its expectations have not beeen realized, certainly no relief can be granted to it.

Respondent denies that the growth of said town has been greatly retarded by the failure of this respondent to build said road. A history of the country and of every day observation proves conclusively that something else is necessary aside from a railroad to or through a town to cause it to grow and become prosperous, and doubtless if this railroad had been built, and coal operations opened in the Pocket or Crab Orchard, that the town of any importance would have been at the Crab Orchard or Pocket termination of the road and not at Pennington Gap. As instances of this it is only necessary to refer to Applachia and Stonega, Coburn and Tom's Creek. Respondent thinks that complainant realizes this fact and that it now expects in the near future that a railroad may be built through said pass, it desires to get this land back and sell at a high figure to the Company building said road for a right of way. Their whole action and the clear tenor of their bill indicating clearly that they are "out on the make" and that speculation and self aggrandizement is their whole object.

It is true that this strip of land was accepted by this respondent for railroad purposes alone, and respondent supposed until it read complainant's amended bill that it was conveyed to it for that purpose, but it now learns that it was conveyed to it as a matter of speculation. Respondent has not used it for any other purpose; it has not used it for any purpose. It denies that it has leased said land to A. Johnson or any other perpon. It is true however that A.Johnson has in-

closed a part of it with a fence, not a rough and unseemly fence, but with a regularly and well built wire fence which respondent believe to be the best enclosed lot in the town. It is likewise true that said complainant has enclosed another part of said strip of land and much larger than that enclosed by Johnson and has had it inclosed ever since said grant. It is true that Johnson has raised crops of vegeatbles on the lot enclosed by him, while complainant has likewise cultivated that enclosed by it. It is further true that said Johnson has built a stable or barn on said lot, but respondent denies that this is any injury to said complainant, and it denies that said stable is an eye-sore to the people who have purchased lots and built on them, and it further denies that this building of a barn by said Johnson has deterred anybody who was able to purchase and build in said town from doing so, in fact respondent is informed and believes that the building erected by said Johnson on said lot is fully an average building with all the other buildings in said town. Respondent denies that the consideration for which said grant was made has wholly failed. The consideration recited is the location and proposed building of said road. It has been located and it is proposed to be built, and will be built as soon as circumstances and conditions justify the same. Respondent denies that a single representation made by it or its agent has turned out to be false,

Respondent now having as fully answered said bill as he is advised it is material or necessary to answer the same, and here agains expressly denying any mistake, mutual or otherwise, in the execution of said deed, and expressly denying every allegation of said bill not hereinbefore denied, admitted or explained, it prays to be hence dismissed with its costs in this behalf unjustly and unnecessarily expended.

Louisville & Nashville Railroad Co

C. F. Duncan

Atty

L. & N. R. R. Co. et al
ads
Answer of
L. & N. R. R. Co.

Pennington Gap Imp. Co.

Filed in open court and
by leave thereof Nov
16th 1901.
A B Munsey Clerk

[illegible] Bill Chy [illegible]

[illegible] R. R. [illegible]

1900. 2nd Feby Rules Bill filed Spa executed & D. N.
" 1st March rules taken the last Monday in Feby
D. N. Conf'd & Cause set for hearing.

1900, 2nd Oct rules amended Bill filed Spa executed & Decree Nisi.
" 1st Nov rules taken the [illegible] Monday in Octo
D. [illegible] Conf'd [illegible] hearing

June Term 1900 [illegible]
Final Order [illegible]
Page 536

Plaintiffs Costs

Clerk	7.46
Tax	1.50
Shff	2.50
C. Clerk	1.25
	$12.71

Would my friend contend that we were
not

Pennington Gap Improvement Co.

v.

Louisville & Nashville R.R. Co.

This day came the defendant by counsel and filed its demurrer in writing to the amended bill of the plaintiff and the plaintiff joined in said demurrer and the cause was argued by counsel, whereupon it is adjudged, ordered and decreed that said demurrer be and it is hereby overruled, and thereupon by leave of court the defendant files its answers to said amended bill to which the plaintiff replies generally and this cause is continued.

P. Gap Imp Co.

vs } Order in demurrer / filing ans.

L & N R R Co.

Entered O.B. 6 P 463

Enter this

H C W Shea

Nov 16 - 1900

Remington Gas Improvement Company, Complainant

vs

Louisville & Nashville R.R. Co. Defendant.

In Chancery -

This cause came on this day to be heard upon the bill of the complainant & exhibits filed therewith & the demurrer of the defendant & joinder of plaintiff, & the court having heard & the argument of counsel, ~~here~~ the said demurrer is hereby overruled & on motion of the plaintiff's leave is granted it to file an amended bill at rules, & this cause is remanded to rules for that purpose.

Pennington Vap Imp Co.

vs. } Trans No 1

L & N. R. R. Co. Deft

Entered on C.O.B. No 6
p 420.

Enter this June
13, 1908

H A Worsham

(Copy.)

Pennington Gap, Lee County, Va.

Oct. 6, 1898.

Louisville and Nashville Railroad Company;

Gentlemen:-

In the year 1890 we conveyed to you a strip of land in consideration that you would construct on the same your Craborchard Branch, but up to the present you have not build said road, so we think the conveyance to you is void. And furthur this strip of land was fenced by one A. Johnson and he has been farming the same for some three years and said Johnson is now preparing to build on said land a house of some kind. He claims to have your consent. We wish to say we are advised that these acts forfeit the conveyance, so we will ask you to reconvey to us this strip of land. Let us have your conclusion.

Yours very truly,

Pennington Gap Improvement Co

I hereby certify that on the 6th day of October, 1898, I delivered to T.A. Brownlie, agent for said Louisville and Nashville Railroad Company at Pennington depot, a copy of the within.

C.D. Russell, C.L.C.

(Copy)

Pennington Gap, Lee County, Va.

Oct. 8, 1888.

Gentlemen:-

In this year 1880 we conveyed to you

"1" No

(Copy.)

Pennington Gap, Virginia,

Oct. 6, 1898.

Mr. A. Johnson,

Pennington Gap, Va.

Dear Sir:-

We are informed that you are building or preparing to build some kind of a house or barn on the lot of land lying between your and Gibson's store houses. If such is the case we desire to inform you that we claim this land and will claim without payment any and all improvements you may put upon the same.

Yours very truly,

Pennington Gap Improvement Co.

Executed this 6th day of October, 1898 by delivering a copy of the within notice to A. Johnson.

C. D. Russell, C. L. C.

No. "2"

THIS DEED, made and entered into, this the _____day of March, 1901, by and between the LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Kentucky, party of the first part, and PENNINGTON GAP IMPROVEMENT COMPANY, a corporation organized and existing under the laws of the State of Virginia, party of the second part;

W i t n e s s e t h ,- That for and in consideration of the sum of One ($1.00) Dollar cash in hand paid, the receipt of which is hereby acknowledged, said party of the first part doth hereby grant, bargain, sell and convey, with covenants of special warranty, unto said party of the second part all those three (3) certain strips or parcels of land, lying in and near the town of Pennington Gap, Lee County, Virginia, and described as follows, to-wit:

1st. A strip of land 100 feet in width lying 50 feet on each side of the center line of the Crab Orchard Branch and extending from the northern boundary of the depot and yard grounds this day conveyed to the Louisville and Nashville Railroad Company by the Pennington Gap Improvement Company in a northerly direction for a distance of 8100 feet, more or less, to the crossing of the North Fork of the Powell River near the Hanging Rock;

2nd. A strip of land 100 feet in width adjoining the west side of the land above described and extending from the Poor Valley road at station 49 of the center line of Crab Orchard Branch southwardly for a distance of 500 feet to the old division line between V. H. Kelly and W. M. Pennington;

3rd. A triangular piece of land bound and described as follows: Beginning at a point in the east line of ~~the~~ strip of land first above described opposite station 10 of the center line of the Crab Orchard Branch, thence south 54 degrees 33 minutes east for a distance of 570 feet to a point of curve, thence by a 10-degree curve to the left for a distance of 165 feet, more or less, to the north boundary of the depot and yard ground this day conveyed to the Louisville and Nashville Railroad Company by the Pennington Gap Improvement Company, thence westerly along the said north boundary line of the depot and yard grounds for a distance of 500 feet, more or less, to the east line of the strip of land first above described, thence northerely along the said east line for a distance of 650 feet, more or less, to the place of beginning. The description of the center line of the Crab Orchard Branch for which the above right-of-way is given being as follows,-commencing at station 1572 ± 10 of the Cumberland Valley Extension said commencement point being designated as station 0 of the Crab Orchard Branch, thence by a 1045" curve to the left for a distance of

100 feet to a point of compound curve at station 1, thence by a 10' curve to the left for a distance of 900 feet to a point of tangent at station 10, thence by a tangent bearing N. 54 33' W. for a distance of 1100 feet to a point of curve at station 21, thence by an 8' curve to the right for a distrance of 800 feet to a point of tangent at station 29 60, thence by a tangent bearing N. 14 15' E. for a distance of 627-3/10 feet to a point of curve at station 35 87-3/10, thence by a 60' curve to the left for a distance of 675-3/10 feet to a point of tangent at station 42 60-6/10, thence by a tangent bearing N. 26 09' W. for a distance of 790-4/10 feet to a point of curve at station 50 53, thence by a 4' curve to the right for a distance of 755 feet to a point of curve at station 58 08, thence by a tangent bearing N. 4 03 E. for a distance of 1710 feet to a point of curve at station 75 18, thence by an 8' curve to the left for a distance of 538 feet to a point of tangent at station 80 50, thence by a tangent bearing N. 38 31' W. for a distance of 300 feet, more or less, to the west bank of the north fork of the Powell's River near Hanging Rock.

These being the same strips or parcels of land which were conveyed by the said party of the second part to the said party of the first part by deed dated August 25th, 1890, which deed is recorded in Lee County Court Clerk's Office in D. B. 29, page 482,-reference being hereby made to said last mentioned deed for a more particular description of the said property.

IN TESTIMONY WHEREOF, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be thereunto affixed, attested by its Secretary, this the day and year first above written.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

By _____,
President.

ATTEST:

_____,
Secretary.

STATE OF KENTUCKY,

COUNTY OF JEFFERSON,--To-wit:

I, _____, a Notary Public in and for the aforesaid county in the State of Kentucky, certify that M. H. Smith, whose name is signed to the foregoing writing bearing date the ____day of March, 1901, has acknowledged the same before me in my county aforesaid; and I further certify that the said Smith this day acknowledged before me in my said county that he is the President of the Louisville and Nashville Railroad Company, and that he signed said deed as and for the deed of said company, and that the seal affixed to said deed is the seal of said company, and that he was authorized to sign and seal said instrument on behalf of said company, and that the said deed is the act and deed of said company.

Given under my hand, this the ___day of March, 1901.

_____, Notary Public.

Louisville & Nashville
R.R. Co.

To { Deed

Pennington Gap Imp. Co.

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon The Louisville & Nashville Railroad Company, a Corporation and A. A. Johnson

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the 3rd Monday in October 1900 ~~189~~, to answer an amended bill in chancery exhibited against them in our said court by Pennington Gap Improvement Company, a Corporation

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 25th day of September 1900 ~~189~~, and in the 125th year of the Commonwealth.

A. B. Munsey Clerk

Executed on Sept. 26th day of Sept, 1900 by delivering a true copy of the within Summons to A. Johnson, and also to E. B. Mouser agent for the Louisville & Nashville Railroad Co., at Pennington Station in Lee Co., there being no president, treasurer, director or other officer of said railroad company in said county on whom process could be served. This Sept. 26th 1900

D. P. Ely D.S.
for H. J. Milham S. L. Co

Sept 26 1900

Form No. 300½.

Pennington Gap Improvement Co

vs.

SUBPOENA IN CHANCERY

The Louisville & Nashville Railroads Company

Pennington Bros p. q.

To 2nd October Rules.

Circuit Court.

Recieved Sept 25th 1900

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon The Louisville & Nashville Railroad Company a corporation doing business in the State of Virginia

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the 1st Monday in February 1900 ~~189~~, to answer a bill in chancery exhibited against it in our said court by Pennington Gap Improvement Company a corporation organized & existing under the laws of the State of Virginia

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 10th day of January 1900 ~~189~~, and in the 124th year of the Commonwealth.

A B Munsey Clerk

Form No. 300½.

Pennington Gap Impt Co

vs. { SUBPOENA IN CHANCERY

L & N R.R. Co

Pennington Bros p. q.

To 1st February Rules.

1900 Circuit Court.

There being no President, Cashier, Treasurer or General Superintendant, or any of the directors of the Louisville & Nashville Railroad Company, found in or resident of any County, I executed the within Summons by delivering a true copy of the same on the 22nd day of January 1900, at 11 Oclock A.M. to W.E. Fleenor Depot agent of the said Railroad Company at its depot at Oconita in the said County of Lee & State of Va. the said W.E. Fleenor being a resident of said County & said Depot being the place of his business of said Co. & of said W.E. Fleenor, agent as aforesaid, this the 22nd day of January 1900.

W. J. Wilkerson Sheriff of Lee

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon The Louisville & Nashville Railroad a corporation doing business in the State of Va. and A. Johnson

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the 3d Monday in February 1900 ~~189~~, to answer a bill in chancery exhibited against them in our said court by Pennington Gap Improvement Company a corporation organized and existing under the laws of the State of Virginia

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 24th day of January 1900 ~~189~~, and in the 124th year of the Commonwealth.

A. B. Munsey Clerk

Dan 26

Form No. 800½.

Pennington Gap Impt.

vs. SUBPOENA IN CHANCERY

L & N. R. R. Co et al

Pennington Boos p. q.

To 2nd February Rules.

1900. Circuit Court.

us to said Railroad Company Executed this the 22 day of January 1900 at 4 o'clock P.M. by delivering a true copy of the within summons to T. A. Brownlee depot agent of the said Railroad Company at its depot at Pennington Gap in said county, there being no president, cashier, treasurer general superintendent or any of the directors of the said Louisville & Nashville Railroad Company found in or resident of my county, and the said T. A. Brownlee being a resident of said county, and the said depot being the place of business of said Company and of the said T. A. Brownlee agent as aforesaid. and further executed as to the said A Johnson by delivering to said Johnson a true copy of said within summons on the day and year first aforesaid.

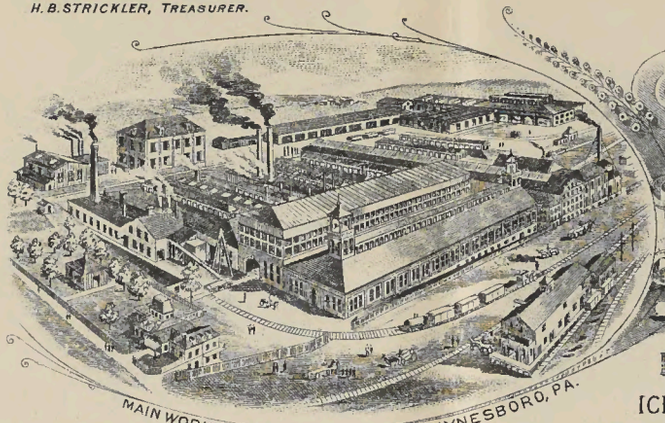
S. P. Ely D.S.
for W. J. Wilcham
S.S.C.

(M 457)

S.B. RINEHART, PRESIDENT.
H.B. STRICKLER, TREASURER.

A.H. STRICKLER, VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A.H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853

FRICK COMPANY.

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated G.M.Stains.

Waynesboro, Franklin Co. Pa. Dec. 26th, 1899.

Messrs. Pennington Bros.,

Jonesville, Va.

Gentlemen,

We have received your favor of the 19th inst. in regard to Stains case and note contents of same.

We note that the suit was instituted by you in the name of the Greer Machinery Co., at their instance, but without specific instructions from them instructing you to make them plaintiffs, you supposing that it was their claim from the fact of their not having stated anything to the contrary until after the papers were received by you, some days later, when it appeared that they were taking in the name of the Frick Co., whereupon you prepared the bill in such a way as to show that there was an assignment of the claim by the Frick Co. to the Greer Machinery Co.

We suppose the reason you were required to make the Frick Co. a party defendant was that the papers did not show the assignment, or rather showed the claim to be one due to the Frick Co. and you, supposing that the Greer Machinery Co. and the Frick Co. were acting together in this matter, or that their interests were identical, appeared for the Frick Co. and waived service &c.

At the time this suit was brought, the Greer Machinery Co. was liable to us for the net price of the machinery under the provision

of the contract, which we quoted to you in our other letter, and, unless we chose to relieve them from that provision and take the case off their hands, the claim against Mr.Stains did belong to ~~them~~ us, and, as we understand this matter now, since reading your letter, we can see no objection to the appearance which you made for us, as the effect of it can only be to enable the Greer Machinery Co. to collect the money. We disclaim all interest in the suit, or its proceeds, and look exclusively to the Greer Machinery Co. for our money.

With respect to the cross bill, or rather the answer of the defendant, in so far as it is to be treated as a cross bill against us, we understand that you didnot a pear for us in that and that the defendant cannot bring us into court on the cross bill, unless we voluntarily appear, or he attaches something of ours in the State and makes it a proceeding in rem, and also that we could not be brought before the court by an order of publication so as to get a judgment in personam against us.

So far as we can see at present, there is nothing in your relations to the case which would prevent you from representing us in case of an effort to get service against us or to recover on the cross bill, and we will ask you to keep us advised of any such efforts and to take such steps in the first place as may be necessary to prevent any available service being gotten against us and then, if we find that you can consistently represent us in defending the cross bill, arrangements can be made for the same.

Mr.Gordon has just now called my attention to he fact that you suggested to him that the notes should be transferred to the Greer Machinery Co. We are willing to do this at any time, as we do not claim any interest in them.

P.B.#3.

You will observe that our claim against the Greer Machinery Co. was not based on the fact that they brought this suit in their own name, but on the fact that they sold and delivered the machinery in violation of their agreement with us.

Yours truly,

Frick Company. JBR

COPY.

Knoxville, Temn., Dec. 23, 1899.

Frick Co.,
Waynesboro, Pa.

Gentlemen,-- Referring to yours of the 15th in relation to the G.M. Stains case, will say that we are somewhat surprised at the position your Mr. Raby takes in this case. He is certainly not at all modest in his demands.

Regarding the matter of submitting orders to you for your approval, you will doubtless understand that this has never been the custom in disposing of second hand machinery. In all of our business extending over a number of years as we now remember we have never referred a single order to you, and no objection was ever raised. Again, we advised you more than a year ago of this sale and no objection was ever raised on this score until yours of the 15th inst.

The clause of the contract quoted by you has no application to this transaction, and of course we cannot comply with your request to remit for the machinery.

As to the matter of your appearance in the suit at Jonesville, we can only say this was evidently done to protect you and upon the direction of the court. As to the exact manner in which it was done, we shall have to advise you later. So far we have no information on the subject but have written the attorneys for the papers and the facts and will write you again when we hear from them.

Yours truly,

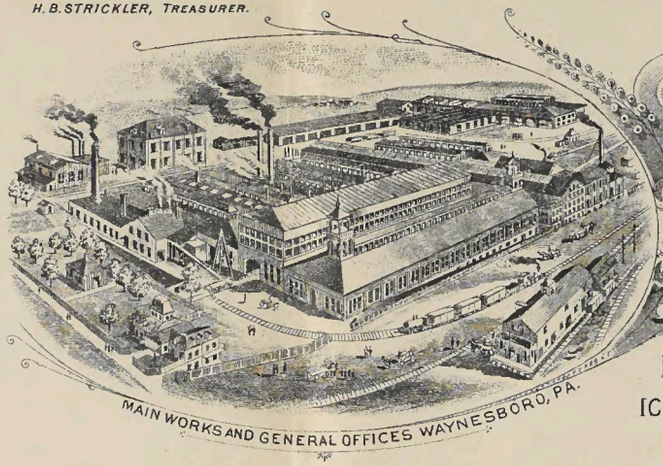
(Signed) Greer Mch'y Co.

(M 457)

S.B. RINEHART, PRESIDENT.
H.B. STRICKLER, TREASURER.

A.H. STRICKLER, VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A.H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853

FRICK COMPANY.

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated

G.M.Stains.

Waynesboro, Franklin Co. Pa. Dec.27th, 1899.

Greer Machinery Co.,

Knoxville, Tenn.

Gentlemen,

We have your favor of the 23rd inst. in reply to ours of the 15th in regard to G.M.Stains matter.

You say: "Regarding the matter of submitting orders to you for your approval you doubtless understand ~~that~~ this has never been the custom in disposing of second hand machinery."

To what extent that is correct, I cannot say without going over the record of your business. But however it may be, we would call your attention to the fact that the engine was not second hand; and, so far as the saw mill is concerned, while you might possibly raise such a question with respect to it, if it had been sold alone, we do not see how you could do so when it was sold, together with the engine and other property, for a gross price. We do not see how you can separate the transaction and say the engine was sold for so much, and the saw mill for so much, and to that extent, namely, the amount for which the saw mill was sold, it was authorised. And, therefore, it must be that the whole sale was unauthorised. And you are liable to account to us for the net price of the engine with interest from the date of sale, and you are also liable to account (in connection with the Gentry case, if, as you stated to Mr.Gordon, it was the Gentry saw mill), for the value of the saw mill, with interest from the

G.M.Co.#2.

date of sale.

You also say: "Again we advised you more than a year ago of this sale and no objection was ever raised on this score until yours of the 15th inst."

We suppose you refer to what occurred when Mr.Gordon was down there to see you a little over a year ago, and when you told him that this machinery was sold but that you had not received settlement for the same and asked him to carry it as unsettled machinery. But you did not report all the facts to him about the sale and especially you did not tell him that the machinery had been sold on your own responsibility without taking an order and referring it to us for approval. When Mr.Gordon was to see you several weeks ago, he inquired more particularly about this machinery and when he left you he stated that he did not know what position we would take. But we do not see that it is necessary to go into this. Even if what you say is correct, and we were fully advised of the facts a year or more ago and did not raise any objection, we do not see that it would affect the case. What you say could only operate as a waiver or by way of estoppel. For the former a consideration would be necessary, and to constitute the latter it would be necessary that our failure to raise objection should have operated to your injury. Neither of these is present in this case, and we shall be obliged to stand upon the position stated above.

We trust that upon consideration you will change your mind about this matter and see that what we are insisting on is only just and right, and that you will favor us by remitting for the engine and by making up and submitting to us a statement of the Gentry matter, applying the value of the saw mill as of the date of the sale to Stains

Yours truly,

Frick Company.

JBR

G. W. MONTGOMERY. T. D. ARNOLD.
LAW OFFICE OF
MONTGOMERY & ARNOLD,
TAZEWELL, TENN.

Tazewell, Tenn., July 31st, 1899.

Messrs. Pennington Brothers,

Attorneys-at-Law,

Jonesville, Virginia.

Gentlemen:-

Messrs. Greer Machinery Company, of Knoxville, Tenn., have referred to us your letter to them of July 29th, instant, with the request that we furnish you the necessary information, in regard to the suit brought by them on the $200.00 note against G. M. Stains and R. N. Price.

Greer Machinery Co., when they sold the machinery to Stains, took from him a contract, on the bottom of which was a guarantee in these words:

"For value received, the undersigned hereby guarantee that the purchaser will settle for the machinery ordered, according to the terms herein, and further, that we will endorse the note first note and guarantee the payment of the same."

The words "first note", underlined above, are interlined after the printed word note, which accounts for the awkward expression. This guarantee is signed by Charles H. Price and R. N. Price.

The "first note" in the contract is the $200.00, which; by the terms of the contract, was to be made payable in 3 months from the date of the contract, (Sept. 30, 1897). This $200.00 note never having been executed nor endorsed as per the above guarantee, we, for Greer Machinery Co., brought suit before a justice of the peace against R. N. Price, one of the guarantors. This suit was begun July 18th, 1898. The warrant was returned for trial on July 25th. W. G. Colson came over here, representing Stains, and associated with himself Mr. W. A. Owens, an attorney of this place, and they filed a plea of non est factum. The case was thereupon continued until Aug. 8, 1898, and an agreement entered into by the attorneys for each party to take depositions for the plaintiff in Knoxville, on July 2, 1898. On that

G. W. MONTGOMERY. T. D. ARNOLD.
LAW OFFICE OF
MONTGOMERY & ARNOLD,
TAZEWELL, TENN.

day, the writer, (Arnold), went down to Knoxville, to take said depositions, and said Colson was there representing the defendant. We took the deposition of John M. Boyd, the salesman who sold the machinery, and Colson cross-examined him. That deposition is now in our possession, and Greer Machinery Co. also have a copy of same.

Owing to the nature of the defence that Colson seemed to be preparing to set up for Price, Mr. Greer thought we had better dismiss our J. P. suit and bring suit in Chancery Court here. This we did, dismissing our J. P. suit and filing our bill in Chancery on Aug. 8th, 1898. On Nov. 3rd, 1898 R. N. Price, by his solicitors W. G. Colson and W. A. Owens, filed his Answer to our bill, in which is set out at length his defence to the suit, and to which is attached as an exhibit to his answer a certified copy of the trust deed executed on October 8th, 1897, by George M. Stains to E. W. Gillespie, Trustee, which deed is of record in the office of the Clerk of the County Court of Lee County, Virginia, in deed book 33, page 377.

We know that Colson was personally here and consulting with Mr. Owens when the Answer was prepared, and that he was here in person at the time set for the hearing of the J. P. suit.

These are the only facts that we know tending to show knowledge of the trust deed on the part of Colson. We do not know whether they are sufficient to show knowledge before he claims to have purchased or not.

A part of the Answer which they file here in the Chancery Court is an insistence that we can not sue Price until we have foreclosed said trust deed.

The contract which was given at the time the machinery was purchased, expressly, on its face, retains title to the machinery until

G. W. MONTGOMERY. T. D. ARNOLD.
LAW OFFICE OF
MONTGOMERY & ARNOLD,
TAZEWELL, TENN.

same is paid for. We do not know what figure this fact may cut under your law, but thought well to call your attention to this fact.

We, a short time back, sent Greer Machinery Co. a copy of the Answer which Colson filed for his client, and we will suggest to them that they send that to you, as it may throw some light on the matter for you.

We think you have got a "nigger in the wood pile" if you can only get him out. We wish you success. If we can give you any further assistance in the matter, command us at any time.

Truly yours,

Montgomery & Arnold

J. M. GREER. JNO. G. DUNCAN. W. O. GREER, E. W. GILLESPIE.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn., Dec 26, 1899

Pennington Bros.,
Jonesville, Va.

Gentlemen,- We have not yet heard from you with copy of papers showing the line of defense made by the different parties in the Stains case. We think it important that we have these as soon as possible.

Yours truly,
Greer Mch'y Co.

P.S.

By referring to the copy of the mortgage that we have in our possession we see it reads as follows: "Geo. M. Stains is justly indebted to Frick Co. Incorporated, Wtynesboro, Franklin Co., Pa. in the sum of Nine Hundred and Seventy Fove and 35/100 D llars, with interest according to the terms of each certain promissory note duly exeuted by him payable to GREER MACHINERY OO. or order as follows:" Will you kindly compare this with the original mortgage and let us know if our copy is correctly made. Our attorneys here are very anxious to know definately how this is. We would also ask you to state whether the notes are made payable to Greer Mch'y Co. or to the Frick Co.

G.M.Co.

Dec. 28, 1899.

Mess. Greer Machinery Co.,

Knoxville, Tenn.

Gentlemen:-

Replying to yours of the 26th in regard to the G.M. Stains case we will say that we herewith enclose the answer of G.M. Stains, from which you will see that he has set up quite a peculiar defense.

In reply to the P.S. of your letter we will say that the notes are made payable to Fick Company. The clause quoted is correctly quited except the printed words, in the printed form "Greer Machinery Company" has two red lines drawn though the first two wrods "Greer Machinery", and no doubt the intention was to write above those words strichen out the word "FricK", so as to make it readt Frick Company, but we think this an immaterial error. The greatest error in the deed of trust is its acknowledgement, which is in our opinion absolutely worthless, though the attorneys for the defendant has never discovered it.

The only answer that has been filed in the case was filed by G.M. Stains, but it is our understanding that at the next term of the court there will be an other answer filed by a party living in Ky., who claims to have purchased the machinery, but whose name we do not know, from Stains. If, however, we should fail by reason of the deed of trust not being properly upon record, by the sale

to an other part,you might bring Stains to time by the institution of a criminal prosecution against him for the larceny of the property,for it is expressly declared by our staute,"That whenever any person is in possesion of any personal property,in any capacity,the title or ownership of which he has agreed in writing shall be and remain in another,and such person so in possession shall fraudulently sell,pledge,pawn,or otherwise dispose of the property without the written consent of the owner or the person in whom the poszession is,or if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust,he shall be deemed guilty of the larceny thereof". And by another staute defining the grades of larceny and its punishment,says that were the value of the property is more than $50.00 the offense is gand larceny, and punished by confinement in the penitentiary not less than one nor more than 10 years. Now if this sale was made in the state of Virginia,we have a good case against him, and we think it well to say nothing of this prosecution untill he gives his deposition in the case, which we suppose that he will and then we will innocently ask him when and where the sale took place when we will get him to detail the whole transaction ,a trade which we have no doubt exist only in the monds of Stains and his accomplice.

Yours very truly,

E. W. PENNINGTON, JUDGE LEE CO. COURT,
PENNINGTON GAP, VA.

ROBT. L. PENNINGTON,
JONESVILLE, VA.

PENNINGTON BROTHERS,

Attorneys at Law,

REFERENCES:
POWELL'S VALLEY BANK, JONESVILLE, VA.
PENNINGTON GAP BANK, PENNINGTON GAP, VA.
R. G. DUN & CO.,
KNOXVILLE AND RICHMOND.

OFFICES AT PENNINGTON GAP AND JONESVILLE, VA.,
OFFICES CONNECTED BY TELEPHONE.

2 *Jonesville, Lee Co., Va.,*

to an other party, you might bring him to time by the institution

of a criminal prosecution for larceny. Pennington

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn. July 25-1900

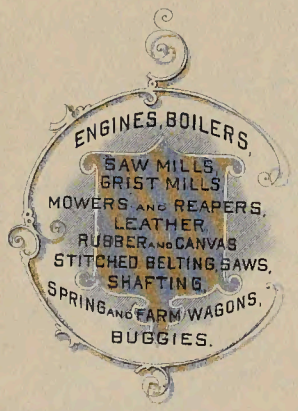
Pennington Bros.,
Jonesville, Va.

Gentlemen:- We enclose herewith a report of the Trustee, E.W. Gillespie, in relation to the sale of the G.M. Stains Saw Mill outfit. We will kindly ask you to look after this and take such steps as are necessary to protect Frick Co's interest in this case. As you will see from the report of the Trustee the property was bid in for Frick Co. at $450. We believe you have all the notes, mortgaged, etc. in this case. We would be pleased to have you advise us from time to time what progress you are making in this case.

Yours truly,
Greer Mch'y Co.

Enc.

J. M. GREER, JNO. G. DUNCAN, W. O. GREER, E. W. GILLESPIE,



GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn Dec 22, 1899

Pennington Bros.,
Jonesv lle, Va.

Gentlemen,- Referring again to your favor of Aug. 18th we would like to hear from you as to what Mr. Colson claims. That is to say whether he claims to have bought the machinery from Stains or some other person. Let us pnow how this is by return mail. We suppose he has filed his andwer by this time.

Gours truly
Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn., June 22 1900

Pennington Bros
Jonesboro Va
Gents

Some days ago I sent notices in the Geo M. Stones case did you get the notices properly posted and in time

Yours Truly
E W Gillespie

Dear Sir
Notices were posted in time,
June 23, 1900.
Pennington Bros

N O T I C E.

S A L E O F S A W M I L L A N D E N G I N E.

Whereas, on the 8th, day of October 1897 G.M. Stains executed to the undersigned E.W. Gillespie, Trustee, a deed of trust upon one Frick Co. 9x12 cylinder portable Engine, and one second hand Frick Co. Saw Mill and fixtures, to secure the payment of $975.35, payable as follows: $200. due Jan. 8-1898, $115.35 due April 8-1898, $110. due July 8-1898 $110 due Oct. 8-1898, $110. due Jan. 8-1899, $110. due April 8-1899, $110. due July 8-1899 and $110. due Oct. 8-1899, owing to Frick Co. of Waynesboro, Pa. and whereas it was provided that if said payments be not made as they should fall due that then the said E.W. Gillespie was empowered to proceed to sell said Machinery at public auction to the highest bidder after having first given ten days notice of such sale by written or printed notices posted in the vicinity where the sale should be made and one at the front door of the court house of Lee County, which sale should be made either for cash in hand or on credit as said Trustee should deem best: and whereas, the said G.M. Stains, has failed to pay the whole or any part of the said debt, and the said Trustee having been requested by the said Frick Co. to make sale of said Machinery, now, therefore,

T A K E N O T I C E.

That on the 30th day of June 1900 at the front door of the court house of Lee County, I shall offer said property above described for sale to the highest bidder for cash in hand, the proceeds of which sale shall be applied as directed by the said deed of trust. This June 16-1900

E.W. Gillespie, Trustee.

7/23/1900.

Greer Mch'y Co.,

Gentlemen:

Regarding the sale of the G. M. Stains Machinery made at Jonesville, Va. on June 30th, 1900 will say that the records show that the lien on this machinery was for $975.35 payable as follows:

$200 due Jan. 8-1898
$115.35 due April 8-1898
$110 due July 8-1898
$110 due Oct. 8-1898
$110 due Jan. 8-1899
$110 due April 8-1899
$110 due July 8-1899
$110 due Oct. 8-1899

This machinery was sold as above stated on June 30th, 1900, at Jonesville, Va. as advertised, sale as shown on the report herewith attached for $450. This machinery I understood at that time was located near Ewing, Va.. Mr. J. D. Yarberrow of Ewing, Va. states that it is located near his mill about three miles from Ewing. He also, stated he would haul it to the railroad and load it for us if we wanted it shipped. I would rather suppose these people who have it in charge if they find out we are likely to dispose of the same would try and get it out of that section of the country.

I was informed by our attorneys at Jonesville that our chances for recovering this machinery are slim as we have never had our deed properly executed. I do not know of any suggestion that I could offer toward getting possession of this machinery. It was my advice at the commencment of this suit to take charge of this machinery and make our fight from the commencement.

Yours truly,
E. W. Gillispie.

West. Johnston & Co., Richmond.

Know all Men by these Presents, That we J. M. Gress, J. G. Duncan, N. O. Gress R. L. Pennington & E. W. Pennington

are held and firmly bound unto G. M. Stowers

in the sum of Fifteen Hundred & Fifty Dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. We hereby waive the benefit of our homestead exemption as to this obligation. Witness our hands and seals this 31st day of July 1899.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas Gress Mochinery Company

plaintiff in a suit instituted in the Circuit Court of the County of Lee, against G. M. Stowers

defendant, has upon affidavit, made in due form of law, sued out of the Clerk's Office of the said Court an attachment against the estate of the said G. M. Stowers for the sum of Seven Hundred & Seventy Five Dollars being the amount claimed by the said plaintiff in the said suit.

NOW THEREFORE, If the said Gress Mochinery Company shall pay all costs and damages which may be awarded against Them or sustained by any person by reason of Their suing out the said attachment, then the above obligation to be void, otherwise to remain in full force.

Gress Mchy Co. [SEAL.]

[SEAL.]

[SEAL.]

Executed in the presence of

In the Clerk's Office of the Circuit Court of the County of Lee, the ____ *day of* ____ *189* .

____ the securit in the above bond, this day made oath before me, A. B. MUNSEY, Clerk of the said Court, that ____ estate , after a payment of all ____ debts and of such liabilities as he ha incurred for others and expect to have to pay, ____ worth $ ____ the penalty of the said bond.

Given under my hand as Clerk of the said Court this ____ day of ____ 189 .

____ Clerk.

Grier Mocking Co

to { Attachment Bond.

G. M. Stacks

Remington Bros p. q.

J. M. GREER. JN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

KENTUCKY LITHO CO. JONESVILLE

Knoxville, Tenn. Feb 5, 1900

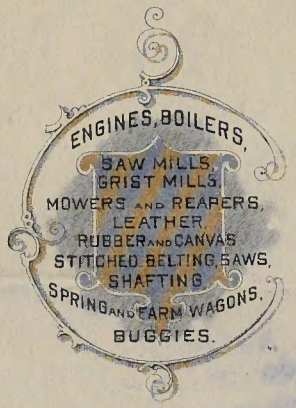
Pennington Bros.,
Jonesville, Va.

Gentlemen,- We are in recei t of your favor of the 2nd in relation to the Stains case for which please acceptour thanks. Sorry to note that you have such a doubtful opinion regarding this case. If this case is lost we hardly think it worhh while to undertake another case in your State, for the proof we will be able to furnish in this case is as conclusive as any case we ever had. The only question that we know if is the question you raised yourself regarding the acknowledgement of the deed, and both Mess. May, May & Smith and Fulkerson, Page & Hurt disagree with you on this. They both say that there is no question on this subject and for this reason we thoughtit best to have May, May & Smith confer with you a d assist you in the case.

Regarding the additional fee in this case we could not answer this until our Mr. Greer is able to come to the office. He is now and has been for some time confined to his room with grip but in as much as we furnish assistance in this case itoccurs to us it would be satisfactory for you to proceed as per your original contraht. As you suggest the expenses in this case will be very great. If we succeed in the case your fee will be we think satisfactory, at least it is as large a fee as we usually pay in such cases. As soon as our Mr. Greer is able to get out he will likely go up to see you and have a talk with you on the subject. In the meantime we will tru to have May & Smith send their representative tz Jonesville. Rlease state what day in March your court convenes.

Yours truly,
Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.



GREER MACHINERY COMPANY

WHOLESALE DEALERS.

KENTUCKY LITHO CO. LOUISVILLE

Knoxville, Tenn., Feb 10, 1900

Pennington Bros.,
Jonesville, Va.

Gentlemen,- Since writing you thi A.M. our attention has just be n called to the fact that you sent us some papers. We will forward these also copy of the order and trust deed to May May & Smith, so you will understand that you will not need to forward these.

Yours truly,
Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn.

Feb 1 , 1900

Pennington Bros.,
Jonesville, Va.

Gentlemen,- Referring again to your favor in relation to sending the papers to May, May & Smith they write that what they want is a copy of the pleadings, bill and answer in the case. An office copy will do. We do not want the file of papers taken out of the Clerk's office. Kindly forward these to them and oblige. If necessary you can employ some good penman to copy thse papers and we will stand the expense which is usually from 2½ to 5¢ a hundred words.

Yours truly,

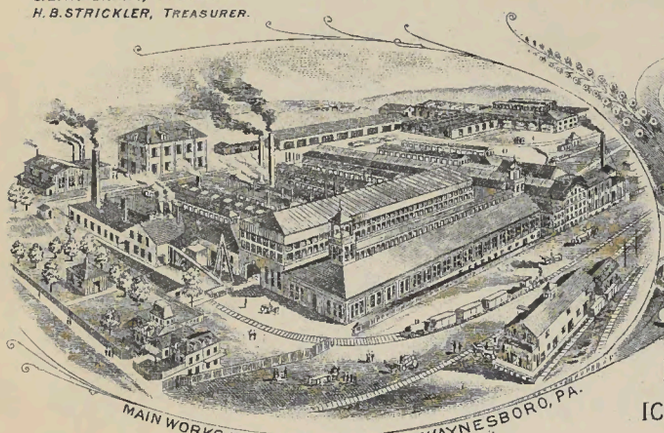
Greer Mch'y Co.

(M 457)

S.B. RINEHART, PRESIDENT.
H.B. STRICKLER, TREASURER.

A.H. STRICKLER, VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A.H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853

FRICK COMPANY,

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated G.M.Stains.

Waynesboro, Franklin Co. Pa. Dec. 15th. 1899.

Messrs.Pennington Bros.,

Attorneys-at-Law,

Jonesville, Pa.

Gentlemen:--

We duly received your favor of the 6th inst. in regard to G.M.Stains case and have held the same awaiting Mr.Gordon's return.

Our Agency Agreement with the Greer Machinery Co., for the year 1897, when the sale was made, provided inter alia as follows: The Greer Machinery Co. agrees "To sell no machinery without taking the purchasers order for the same, on one of the order blanks of the party of the first or second part, filled out in every particular, nor deliver any machinery to the purchaser until such order is accepted by the party of the first part and settlement is made by the purchaser in conformity with the terms of the order, and to be accountable to the party of the first part, on demand for the list price of any machinery sold and delivered in violation of this article, less commission."

As the sale was made in violation of this article, we shall look to the Greer Machinery Co. for our money; and, if anything is recovered against us on the cross bill, we shall expect them to save us harmless.

You can, therefore, see that we are not interested in the prosecution of the suit or suits which have been instituted by the Greer Machinery Co., and, if we made any agreement with you about your fees, we might prejudice our rights against the Greer Machinery Co. and complicate our case considerably.

Geo.M.Stains dated Nov.15th,1897 letter from Brennan & Co., S.West'n Agrl. Works, to Greer Machinery Co. dated Dec.17th, 1897, letter from Geo.M.Stains to Greer Machinery Co., dated Jan.17th,1898 letter from Greer Machinery Co. to O.Schmalzried, dated March 28th, 1898, also statement referred to in said letter, one from Greer Machinery Co. to Geo.M.Stains, dated Jan.18th, 1898 and letters from Montgomery & Arnold Attorneys, to Greer Machinery Co., dated July 26th and 27th, 1898 and a telegram from Geo.M.Stains to Greer Machinery Co., dated Feb.9th.1898 and one from J.W.Cheatham to Greer Machinery Co. dated July 11th, 1899.

Also copy of order given by Geo.M.S tains to the Greer Machinery Co. dated Sept.30th,1897 and copy of separate answer of R.N.Price to the bill filed against him et al in the case of Greer Machinery Co. against Geo.M.Stains in Chancery at Tazewell, Tenn.

Also a memorandum of correspondence between the Greer Machinery Co. and Geo.M.Stains from Sept.27th,1897 to Feb.9th,1898.

We see from an order made in the case, that a demurrer was sustained on the ground that we should have been made a party to the bill of complaint; but that, on motion of the complainant, leave was granted to amend the bill by making us a party defendant, which was done at Bar, and that we appeared to the same and waived process. Will you kindly advise us who appeared for us and waived the process and upon what authority it was done? We wish you would be very specific about this, and that you would also kindly give us a history of the case, such as we may need in order to determine what course to take.

We inclose herewith carbon copy of our letter of this date to the Greer Machinery Co., which will show you more fully the position taken by us and from which you will see that it may become necessary for us to act adversely to them, by contesting the appearance which has been made for us. Will you kindly refer us to the best Lawyers.

P.B. # 4.

We think this case should be fought out between the Greer Machinery Co. and Stains, and do not see that we can afford to let the appearange made for us stand, unless they agree to protect us.

For your services in this matter, we inclose you check No. 39028 on Bowers & Wagenhorst, for $10.00 which we trust will be satisfactory.

Yours very truly,

FRICK COMPANY.

JBR

Encl.

P.B. # 2.

We will cheerfully furnish any information that we can, or render any aid that we can consistently, in the prosecution of the case. We understand from Mr.Gordon that it may be desirable to prove that the Frick Co. 9 x 12 cylinder portable engine on sills delivered by the Greer Machine Co. to Mr.Stains was not #6717. This we can do. All of our engines, regardless of style, size, etc., are numbered consecutively. No.6717 was a 7 x 10 Eclipse portable engine on wheels and was shipped from our factory here to Jacob.M.Baker, Harrisburg, Pa. on June-4-97, under a lessee's order, dated May-28-1897, and if desired, we can no doubt trace this engine up and show just where it is. You will observe that engine No.6717 was not a 9 x 12, nor was it an engine on sills, but it was a 7 x 10 on wheels, and was shipped from here to Mr.Baker prior to the time that the engine ~~was~~ bought by Mr.Stains was delivered. If there is any other information wanted from us, we will cheerfully furnish it.

We return herewith the papers which were handed by you to our Mr.Gordon, namely, deed of trust, given by Geo.M.Stains payable to the order of Frick Co., all dated Oct.8th,1897 and due July 8th, 1898, and Oct.8th,1898, Jan.8th. April 8th. July 8th, Oct.8th, 1899 and the one for $115.35 due Oct.8th.1898.

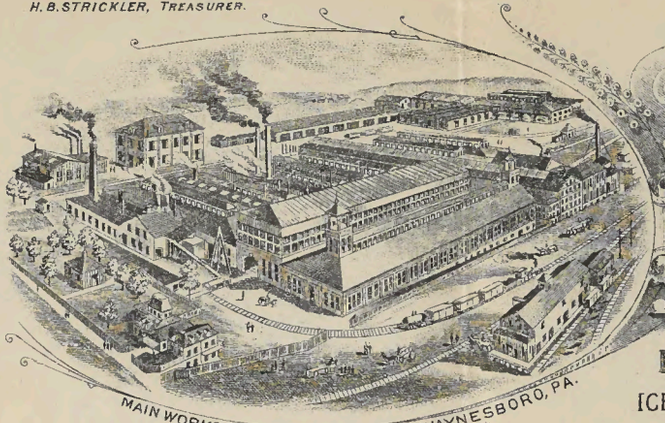
Also the following letters and telegrams: letter from Chas.H.Price to Greer Machinery Co.,dated Sept.30th,1897, letter from Greer Machinery Co. to Geo.M.Stains dated Oct.2nd,1897 letter from Geo.M.Stains to Greer Machinery Co., dated Oct.9th,1897, letter from Geo.M.Stains to Greer Machinery Co. dated Oct9?5th,1897, letter from Geo.M.Stains to the Greer Machinery Co.,datedOct.15th, 1897, letter from Geo.M.Stains to the Greer Machinery Co. dated Oct.28th, 1897, letter from Greer Machinery Co. to Geo.M.Stains dated Nov.1,1897 letter from Geo.M.Stains to Greer Machinery Co, dated Nov.13th.1897 letter from Greer Machinery Co to

(M 457)

S. B. RINEHART, PRESIDENT.
H. B. STRICKLER, TREASURER.

A. H. STRICKLER, VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A. H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853.

FRICK COMPANY.

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated J.D Pennington.

Waynesboro, Franklin Co. Pa. Dec. 23rd, 1899.

Messrs. Pennington Bros.,

Attorneys at Law,

Jonesville, Va.

Gentlemen,

We have a letter from the Greer Machinery Co. under date of Dec. 7th stating that you report to them that when the writer was to see you that he declined to make you a proposition as to the net amount we would accept to close this claim out.

As you will remember, this matter was spoken of in the dining room at the hotel, but you said that at that time you were not prepared to say whether the matter could be consummated or not and I then told you that as soon as possible after my return we would take the matter up and see what we would be willing to accept.

As you understand, the Greer Machinery Co. is jointly interested with us o in this matter and we will have to consult them before we can make you a final proposition. We have to-day written th them in regard to the matter and as soon as we hear from them, will write you definitely.

Yours truly,

Frick Company. Gordon

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn.,

Jany 2/1/1900

Pennington Bros.,
Penningtons Gap. Va

Gentlemen,- Referring to the case f G.M. Stains, we have employed Mess May, May & Smith of Tazewell, Va. to assist you in this case for the reason that they have represented us in some cases similar and have been very successfuh , and in as much as we understand that this case is somewhat complicated we thought probable it would be better for you to have some assistance. We qould therefore suggest that you forward the files all to May, May & Smith at Tazewell, Va. and write them funny regsrfing the case; or if you think it importsnt they will probsbly be abne to go to Jonesville soon to confer with you.

Hoping this arrangement will meet with your approvsl and to hear from you by return mail, we are

Yours truly,

Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn. Feb 15, 1900

Pennington Bros.,
Jonesville, Va.

Gentlemen,- We are in receipt of your kind favor of the 14th in relation to the Stains case for which please accept our thanks. Your suggestion regarding depositions is entirely satisfactory. We are willing to pay your expenses when you are required to go away from Jonesville to take depositions. Of course we would not expect to pay expenses for depositions taken in Jonesville. We are very much obliged to you for the copy of the law in relation to probating mortgages and we must confess that it looks a little like you might be right. but we hope in this case that you are not. We will for ward your letter to May, May & Smith and request them to investigate the question a little further.

Yours truly,

Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn. Feb 15, 1900

Pennington Bros.,
Jonesville, a.

Gentlemen,- Referring again to your favor of the 14th in relation to the Stains case, we note your remarks regarding sending copies to Ma y May & Smith. As before stated we sent them a copy of the enswerof Mr. Stains, copy of the trust deed and copy of the order. We did not have the pleadings or bill filed by you and would be pleased to have you forward a copy of this by return mail.

Yours truly,

Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Stains

Knoxville, Tenn. July 17, 1 99

Pennington Bros.,
Jonesville, Va.

Gentlemen,k

We are in receipt of your kind favor of the 14th in relation to the case against G.M. Stains, and will say first in relation to your fee that we have changed it so as to provide that your fee in any event shall not be less than $25. This will we suppose cover all expenses.

Replying further will say that our representative Mr. Cheatham, called to see the mill and had a conversation with Mrp Colson and made the impression upon Col son that he would be employed as an attorney to assist in the prosecution of this case. Colson indicated his willingness to doso and we will write him to-day and enclose herewith copy of our letter. If you think advisable to get him to assist you in the case please advise us, if not please adv se us. It might be well, if he does not remove the machinery, to wait until we hear from Mr.Colson.

We are surprisedto learn that the certificate to the deed is defective Do we understand from you that it is so much so that it would prove fatal in a s it. We do not know how this blunder was made.

Yours truly,

Greer Mch'y Co.

Encls

Stains

July 17, 1899

Mr. W.G. Colson,
Sewanee, Tenn.

Dear Sir,-

Our Mr. Cheatham has just returned and reports that the saw mill outfit sold to Mr. G.M. Stains is in your possession, or on your farm, and he also gives us your name as a suitable man to represent us in the prosecution of this case. Please advise us by return mail if we can make arra gements with you to do so and if so w at fee will you charge us. Are you in position that you could represent us in your county in lookin g after our collections. We need a good active man. Please let us hear from you by return mailand oblige.

Yours truly,

Greer Mch'y Co.

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER,
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Stains

Knoxville, Tenn.,
July 13, 1899

Pennington Bros.,
Jonesville, V..

Gentlemen,-

We enclose herewith mortgage and seven notes on Geo. M. Staina which were given in part settlement for engine and saw mill, also contract which if satisfactory please sign and return.

The first note for $200. named in the mortgage has been sued upon in Tazewell, Claiborne Co., Tenn. The last two notes as you will see are not due but the mortgage provides that all notes fall due if payments are not made in accordance with the terms of the same, so in bringing suit you can treat them accordingly. We have at considerable expense and trouble located the mill on W.G. Colson's farm 4 miles east of Cumberland Gap in Lee Co., Va., and we are advised that they are making preparations to move it to Kentucky or some other place. We therefore suggest that you take steps at once to stop this. We are inclined to think that they will take steps to move this mill within the next 2 or 3 days unless they are stopped. We therefore write you to put you on your guard. We do not know what course is best to pursue in your state but in this state a replevy warrant would be the proper course. However this may be please take proper steps to secure this property at once without delay, and after you have got the property secured you might take steps to foreclose the mortgage. Your prompt attention is very important. We understand the mill is in the possession of W.G. Colson, at least it is on his farm and Mr. Stains himself is in Middlesboro, Kentucky.

Yours truly,

Greer Mch'y Co.

Enc.

other papers mailed
under another cover

Received from Greer Machine Co., of Knoxville Tenn, the following notes for collection. Commission 10 per cent. on the actual amount collected. And it is agreed that no additional fees are to be charged said Company for services rendered on this claim, unless agreed to upon writing in advance. Except actual expenses that may be incurred in taking depositions &c. to be done away from home.

No	Name	P.O.	Date	Due	Rate	Amt
17909	Geo M. Harris	Ewing Va	10 8 97	4 8 98	6%	115 35
17910	"	"	10 8 97	7 8 98	"	110 00
17911	"	"	10 8 97	10 8 98	"	110 00
17912	"	"	10 8 97	1 8 99	"	110 00
17913	"	"	10 8 97	4 8 99	"	110 00
17914	"	"	10 8 97	7 8 99	"	110 00
17914	"	"	10 8 97	10 8 9	"	110 00

No 3107

Sent Jany 18, 99

Pennington Bros

Insurance Va

The fee in no event to be less than $25-00

Jonesville,Va. July 14,1899.

Mess.Greer Machinery Co.,

Knoxville,Tenn.

Gentlemen:-

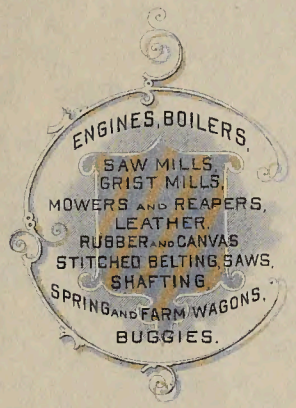
We are just in receipt of your letter of the 13th Inst. enclosing contract for the collection of several notes against G.M.Stains, and in which you say also that you enclose mortgage and notes,but notes and mortgage were not enclosed,but we note there is a pencil note at the foot of your letter"other papers mailed under a spearate cover",from which we infer that the notes and mortgage were sent us by registered mail and will reach us on to-morrow. From the facts stated in your letter that the mill was in the possession of or on the lands of W.G.Colson, we fear that he will set up some claim to the property,a fear that is made exceedingly serious from the fact that the certificate of acknowledgement to your deed or mortgae is, we think,defective, and if Colson has acquired any rights in the matter in good faith and without knowledge of your deed of trust or mortgage,he will no doubt give us trouble,for,as you no doubt know,he is a "slickduck", and if he can make any collusion with Stains we have no doubt that he will do so. We are preparing attachment proceedings to day and will endeavor to get them in the hands of the sheriff so as to get them executed on to-morrow. In order,however,to take the property into possession an attachment bond will have to be executed by some one residing in this state, which we will do for you at your request,and if you desire the immediate possession of the property you will please wire us upon the receipt of the letter,and we will execute the bond for you.

Now in regard to the contract for collection we will say that we foresee a good deal of trouble connected with the collection of this debt,but we are willing to undertake the collection of the debt for 10% streight on the actual amount collected,and if we get nothing charge you nothing, but as we fear we will be obliged take several trips in case of contest in the way of taking depositions &c we would expect to charge you for the actual expenses we shall have paid out in the way of hotell bills,R.R.fare and the like. We have changed the contract to suit the foregoung proposition which we enclose to you and if satisfactory to you we will sign same upon its return to us when we get the notes.

We will use our best efforts to secure this large debt to you and will leave no stone unturned in looking to your protection.

Yours very truly,

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.



GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn., July 29, 1899

Pennington Bros.,
Pelnington Gap, Va.

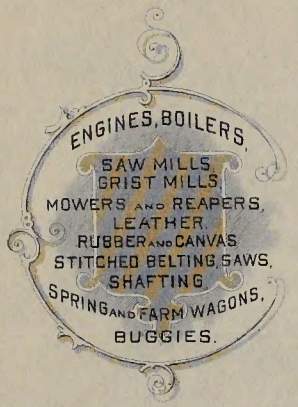
Gentlemen,- Referring to yours of the 29th we have executed bond as requested and if you think best have the machinery taken in charge. You may use your judgment about this. We note your remarks regarding Mr Colsons knowledge of the mortgage on the machinery and will add in this connection that Mr. J.W. Cheatham called upon Mr. Colson a short time ago and as we now remember admitted that the machinery belonged to Stains and proposed to act as our attorney in the case.

Yurs truly,

Greer Mch' Co.

Enc

J. M. GREER. JNO. G. DUNCAN. W. O. GREER. E. W. GILLESPIE.



GREER MACHINERY COMPANY

WHOLESALE DEALERS.

Knoxville, Tenn. Aug 1, 1899

Pennington Bros.,

Penningtons Gap, a.

Gentlemen,- Referring to yours of the 29th in relation to the G.M. Stains case, we n te you say that W.G. Colson claims the ownership of the saw mill outfit and that the acknowledgement of the papers not having been taken in accordance with the laws of your state the mortgage on record would not be sufficient notice. You do not say when Mr. Colson claims to have purchased this outfit. Could you not find out from him in a quiet way at once. This we think important. He was here as we now remember in July, 98 taking depositions. At this time the papers were before him and he examined them carefully. You have a copy of the mortgage on the records and we herewith enclose you copy of the order that was before him at that time, also copy of the bill afterwards filed by him for R.N. Price. Kindly examine these papers carefully and let us know if this will be sufficient.

Yours truly,

Greer Mch'y Co.

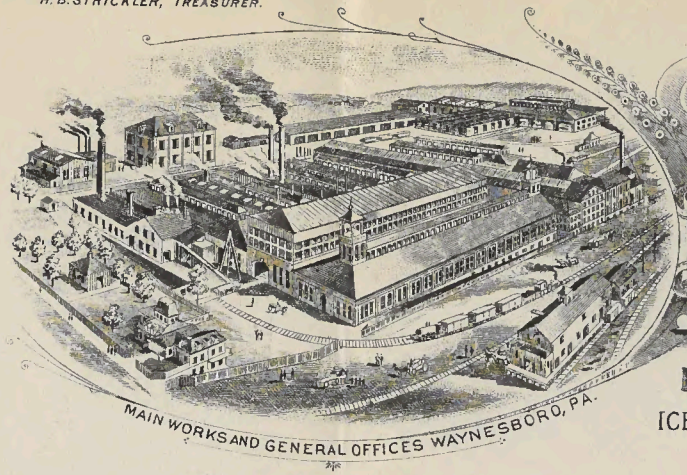
Enc

IM 457)

S. B. RINEHART, PRESIDENT.
H. B. STRICKLER, TREASURER.

A. H. STRICKLER, VICE PRESIDENT.

EZRA FRICK, GENL. MANAGER & SECRETARY.
A. H. HUTCHINSON, MANAGER ICE & REFRIGERATING MACHINE DEPT.



MAIN WORKS AND GENERAL OFFICES WAYNESBORO, PA.

ESTABLISHED 1853

FRICK COMPANY.

MANUFACTURERS OF

ECLIPSE MACHINERY, CORLISS STEAM ENGINES,

ICE MAKING & REFRIGERATING MACHINES, STEAM BOILERS, &c.

ADDRESS ALL COMMUNICATIONS TO THE COMPANY.

Dictated

G. M. Staines.

Waynesboro, Franklin Co. Pa. Dec. 28, 1899.

Pennington Bros.,

Attorneys at Law,

Jonesville, Va.

Gentlemen:-

For your information, we enclose herewith copy of letter of the 23rd inst. from the Greer Machinery Company, together with copy of our reply of the 27th inst.

You will note from the enclosures that we adhere to the positions heretofore taken in this case.

Yours truly,

Frick Company.

JBR

Enclosures.

M. GREER. J[illegible]S. DUNCAN. W. O. GREER. E. W. GILLESPIE.

ENGINES, BOILERS,
SAW MILLS,
GRIST MILLS,
MOWERS AND REAPERS,
LEATHER
RUBBER AND CANVAS
STITCHED BELTING, SAWS,
SHAFTING,
SPRING AND FARM WAGONS,
BUGGIES.

GREER MACHINERY COMPANY

WHOLESALE DEALERS.

KENTUCKY PTG. CO. LOUISVILLE.

Knoxville, Tenn. March 23, 1900

Pennington Bros.,
Jonesville, Va.

Gentlemen,- We are in receipt of your kind favor of the 20th in relation to the Stains case, which is very satisfactory. We enclose herewith check for $38.59 which we understand covers the Pltff's costs $18.59 less $5. printers fee, which we have previously paid. Also your fee of $25. which is satisfactory. We have written to theattorneys at Tazewell to send you copy of the judgment against Stains if rendered. If not rendered we have a note there in litigation. Would this be sufficient We do not know whether the judgment has been rendered or not. We hardly think it has. We will kindly ask you to send the notes and mortgage by registered letter to Frick Co. at Waynesboro, Pa. The other papers in the case, letters, etc. kindly register to us. We have added 20¢ to the check to cover registers fees, making the check $38.79.

Yours truly,

Greer Mch'y Co.

Enk

WAYNESBOROUGH, Franklin, Co., Pa.,
If not delivered within 8 days.

Messrs. Pennington Bros.,
Jonesville,
Va.

IF NOT CALLED FOR IN EIGHT DAYS RETURN TO

FRICK COMPANY, ENGINEERS,

Waynesboro, Franklin Co., Pa.

Manufacturers of

ECLIPSE MACHINERY.

Ice and Refrigerating Machinery

AND CORLISS ENGINES ANY SIZE TO SUIT THE TRADE.

Form 501. 3-99-

Pennington Bros,

Attorneys at Law

Jones

97.00
10.50
111.50
11.15
122.65

10.50
6
97.00
9.70
1067

150.19
106.70
43.49
6
2.08
43.49
4607